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PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 7th May, 2003:—

BILL No. XXXVIII OF 2003

A Bill further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, 2003.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

Amendment
of section 2.

2. In section 2 of the Companies Act, 1956 (hereinafter referred to as the principal Act),— 1 of 1956.

(a) for clause (1A), the following clauses shall be inserted, namely:—

‘(1A) “accounting standards” means the standards of accounting, recommended by the Institute of Chartered Accountants of India, constituted under the Chartered Accountants Act, 1949, and which may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards constituted under sub-section (1) of section 210A; 38 of 1949.

(1AA) “alter” and “alteration” shall include the making of additions and omissions;’;

(b) for clause (8), the following clause shall be substituted, namely:—

‘(8) “book and paper” and “book or paper” include accounts, deeds, vouchers, writings and documents, maintained on paper or computer network, floppy, diskette, magnetic cartridge tape, CD-rom or any other computer readable media;’;

(c) after clause (9), the following clauses shall be inserted, namely :—

‘(9A) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act; 38 of 1949.

(9B) “chief accounts officer” means the chief accounts officer, of a company appointed under section 215A, by whatever name called;’;

(d) after clause (10A), the following clause shall be inserted, namely:—

‘(10B) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;’; 23 of 1959.

(e) clause (14) shall be omitted;

(f) for clause (15), the following clause shall be substituted, namely:—

‘(15) “document” includes summons, notice, requisition, order, other legal process, and registers, whether issued, sent or kept in pursuance of this Act or any other law for the time being in force, whether maintained in any medium capable of being retrieved by any electronic means or in any other manner;’;

(g) for clause (19AA), the following clauses shall be substituted, namely:—

‘(19AA) “independent director” means a director referred to in section 252A;

(19AAA) “industrial company” means a company which owns one or more industrial undertakings;’;

(h) for clause (19AB), the following clause shall be substituted, namely:—

‘(19AB) “industrial undertaking” means any undertaking, pertaining to any of the industries specified for the time being in the First Schedule to the Industries (Development and Regulation) Act, 1951, carried on in one or more factories by any company; and includes ancillary industrial undertaking as defined in clause (aa) of section 3 of that Act but does not include a small-scale industrial undertaking as defined in clause (j) of that section;’; 65 of 1951.

(i) for clause (22), the following clause shall be substituted, namely:—

“(22) “issued generally”, in relation to a prospectus or an abridged prospectus, or any other like document, means issued to persons irrespective of their being existing members or debenture-holders of the body corporate to which the prospectus or abridged prospectus or such other like document relates;”;

(j) clause (27) shall be omitted;

(k) in clause (30), for the words “or secretary”, the words “secretary or chief accounts officer” shall be substituted;

(l) for clause (33), the following clause shall be substituted, namely:—

“(33) “prescribed” means prescribed by rules made under this Act;”;

(m) for clause (36), the following clause shall be substituted, namely:—

“(36) “prospectus” means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate, but does not include an information memorandum or like document issued prior to the issue of a prospectus;”;

(n) after clause (39), the following clause shall be inserted, namely:—

“(39A) “register” means the register of members of a company and includes the register of debenture-holders or holders of other securities maintained on paper or computer network, floppy, diskette, magnetic cartridge tape, CD-rom or any other computer readable media;”.

3. In section 3 of the principal Act, after sub-section (5), the following proviso shall be inserted, namely:—

Amendment
of section 3.

“Provided that in case the private company or a public company,—

(i) fails to enhance its paid up capital in accordance with the provisions of this section; or

(ii) is not carrying on business or in operation referred to in section 560.

the liability of every director or manager or shareholder of such company shall become unlimited.”.

4. In section 4 of the principal Act,—

Amendment
of section 4.

(a) in sub-section (1),—

(i) for clause (b), the following clause shall be substituted, namely:—

“(b) that the other exercises or controls more than one-half of its total voting power in a case where it has issued securities and such securities have the same voting rights as equity shares; or”;

(ii) for clause (c) and *Illustration*, the following clause shall be substituted, namely:—

“(c) that the other holds more than one-half in value of its paid-up capital, in any other case.”;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) No company which is a subsidiary of another company shall, after the commencement of the Companies (Amendment) Act, 2003, become a holding company.”;

(c) in sub-section (7), for the words “the entire share capital”, the words “not less than ninety-nine per cent. of the share capital” shall be substituted.

Amendment
of section 5.

5. In section 5 of the principal Act, after clause (b), the following clauses shall be inserted, namely:—

“(ba) any other director in respect of contravention of any of the provisions of this Act which had been committed with his consent or connivance or is attributable to any neglect on his part;

(bb) the chief accounts officer;

(bc) every employee, who is in receipt of remuneration more than the remuneration drawn by the managing director or any whole-time director in the company in which such an employee is employed and who himself or along with his spouse and dependent children holds not less than two per cent. of the equity share capital of the company;

(bd) the share transfer agents, bankers, registrars to the issue, merchant bankers, in respect of the issue or transfer of any securities of the company;

(be) debenture trustee;”.

Amendment
of section 10.

6. In section 10 of the principal Act, in sub-section (2), clause (b) shall be omitted.

Amendment
of section 11.

7. In section 11 of the principal Act,—

(a) in sub-section (1), for the words “some other Indian law”, the words “any other law for the time being in force” shall be substituted;

(b) in sub-section 2,—

(i) for the words “some other Indian law”, the words “any other law for the time being in force” shall be substituted;

(ii) the following proviso shall be inserted, namely:—

‘Provided that in the case of an association of persons or partnership formed for the purpose of carrying on the profession of advocates, chartered accountants, cost accountants, company secretaries, doctors, architects or such other profession, as may be specified, by notification in the Official Gazette in this behalf, by the Central Government, this sub-section shall have effect as if for the words “twenty persons”, the words “fifty persons” had been substituted.’;

(c) in sub-section (5), for the words “ten thousand rupees”, the words “fifty thousand rupees” shall be substituted.

Substitution of
new section
for section 13.

8. For section 13 of the principal Act, the following section shall be substituted, namely:—

Requirements
with respect
to memo-
randum.

‘13. (1) The memorandum of every company formed, after the Commencement of the companies (Amendment) Act, 2003, shall state—

(a) the name of the company with “Limited” as the last word of the name in the case of a public limited company, and with “Private Limited” as the last words of the name in the case of a private limited company;

(b) the State in which the registered office of the company is to be situated;

(c) (i) the main objects of the company to be pursued by the company; and

(ii) other objects of the company not included in sub-clause (i);

(d) that the liability of the members is limited by shares or by guarantee and, if so, it shall state that the liability of its members is limited;

(e) the share capital of the company;

(f) the name of each subscriber, his address, description and occupation, if any, who shall sign in the presence of at least one witness who shall attest the signature and likewise add his address, description and occupation, if any.

(2) The memorandum of a company limited by guarantee shall also state that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company, or of such debts and liabilities of the company as may have been contracted before he ceases to be a member, as the case may be, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(3) In the case of a company having a share capital—

(a) unless the company is an unlimited company, the memorandum shall state the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount;

(b) no subscriber of the memorandum shall take less than one share; and

(c) each subscriber of the memorandum shall write opposite to his name the number of shares he takes.

(4) There shall be affixed two clear copies of recent photographs of all the subscribers to the memorandum and the witnesses and each such photograph shall be signed by the subscriber and the witnesses alongwith proof of the identity of the subscribers.

(5) The memorandum shall—

(a) be printed electronically or otherwise as may be prescribed;

(b) be divided into paragraphs numbered consecutively.

9. Sections 15, 15A and 15B of the principal Act shall be omitted.

Omission of
sections 15,
15A and 15B.

10. In section 22 of the principal Act, in sub-section (1), for the proviso, the following provisos shall be substituted, namely:—

Amendment
of section 22.

“Provided that the Central Government may, on the ground of the security of the State or public interest, direct any company, within twelve months of its first registration or at any time thereafter, to change its name and such company shall forthwith change its name:

Provided further that no application under clause (ii) made by a registered proprietor of a trademark after five years of coming to notice of registration of the company shall be considered by the Central Government.”

11. In section 25 of the principal Act,—

Amendment of
section 25.

(a) in sub-section (1), in clause (a), for the words “useful object, and”, the words “useful object, not confined to one state, and” shall be substituted;

(b) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) The Central Government may, by general or special order and to the extent specified in such order, exempt a body to which a licence is granted under this section, from such of the provisions of this Act as may be specified therein.”

12. For section 30 of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section
for section 30

“30. (1) Articles shall—

(a) be printed, either electronically or in such manner, as may be prescribed;

(b) be divided into paragraphs numbered consecutively;

Form and
signature of
articles.

(c) state the name of each subscriber, his address, description and occupation, if any, who shall sign in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any.

(2) There shall be affixed two clear copies of recent photographs of all the subscribers of the memorandum and the witnesses and each such photograph shall be signed by the subscriber and the witnesses alongwith proof of the identity of the subscribers.”

Amendment of
section 32.

13. In section 32 of the principal Act,—

(a) in sub-section (1), in clause (b), after the words “under this Act”, the words “as an unlimited company” shall be inserted;

(b) in sub-section (3), for the words “limited company”, the words “limited company or registration of a limited company as an unlimited company” shall be substituted.

Amendment
of section 39.

14. In section 39 of the principal Act,—

(a) in sub-section (1), for the words “a fee of one rupee”, the words “such fee as may be prescribed” shall be substituted;

(b) in sub-section (2), for the words “five hundred rupees”, the words “one thousand rupees” shall be substituted.

Amendment
of section 40.

15. In section 40 of the principal Act, in sub-section (2), for the words “one hundred rupees”, the words “one thousand rupees” shall be substituted.

Amendment
of section 42.

16. In section 42 of the principal Act,—

(a) in sub-section (3), the words “either at the commencement of this Act or” shall be omitted;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) Where a subsidiary company continues to be a member of a holding company under sub-section (3), nothing in this section shall prejudice its rights to be allotted bonus shares of such holding company.”.

Amendment
of section 51.

17. In section 51 of the principal Act,—

(a) for the words “leaving it at its registered office”, the words “leaving it at its registered office or by means of electronic mode or by such other means as may be prescribed” shall be substituted;

(b) in the proviso, for the words “floppies or discs”, the words “floppies or discs or by such other means as may be prescribed” shall be substituted.

Amendment
of section 52.

18. In section 52 of the principal Act, for the words “for, him at his office”, the words “for, him at his office or by such other means as may be prescribed” shall be substituted.

Substitution of
new section
for section 53.

19. For section 53 of the principal Act, the following section shall be substituted, namely:—

Service of
documents on
members by
company.

“53. (1) A document may be served by a company on any member or a holder of any other security thereof either personally, or by sending it in the manner provided in section 51 to his registered address, or if he has no registered address in India, to the address, if any, within India supplied by him to the company for the giving of notices to him or by advertising it in a newspaper circulating in the neighbourhood of the registered office of the company.

(2) Where a document is sent by post,—

(a) service thereof shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document:

Provided that where a member or a holder of any other security has intimated to the company in advance that documents should be sent to him under a certificate of posting or by registered post with or without acknowledgment due and has deposited with the company a sum sufficient to defray the expenses of doing so, service of the documents shall not be deemed to be effected unless it is sent in the manner intimated by the member; and

(b) such service shall be deemed to have been effected—

(i) in the case of a notice of a meeting, at the expiration of forty-eight hours after the letter containing the same is posted; and

(ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.

(3) A document advertised under sub-section (1) shall be deemed to be duly served on the day, on which the advertisement appears, on every member or a holder of any security of the company who has no registered address in India and has not supplied to the company an address within India for giving of notices to him.

(4) A document may be served by the company on the joint-holders of a security by serving it on the joint-holder named first in the register in respect of the security.

(5) A document may be served by the company on the person or persons entitled to a security in consequence of the death or insolvency of a member by sending it through the post in a pre-paid letter addressed to him or them by name, or by the title of representatives of the deceased, or assignees of the insolvent, or by any like description, at the address, if any, in India supplied for the purpose by the persons claiming to be so entitled, or until such an address has been so supplied, by serving the document in any manner in which it might have been served if the death or insolvency had not occurred.”.

20. In section 56 of the principal Act,—

Amendment
of section 56.

(a) in sub-section (2), for the words “shares in or debentures of”, the words “securities of” shall be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) Where any prospectus is published as a newspaper advertisement, or in any other manner, it shall be in the form of an abridged prospectus.”;

(c) in sub-section (3),—

(i) for the words “for shares in or debentures of”, the words “for securities of” shall be substituted;

(ii) for the words “shares or debentures”, the word “securities” shall be substituted;

(d) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) This section shall not apply—

(a) to the issue to existing members or the holders of securities of a company of a prospectus, letter of offer or form of application relating to securities of the company, whether an applicant for securities will or will not have the right to renounce the securities in favour of other persons; or

(b) to the issue of a prospectus or form of application relating to securities which are, or are to be, in all respects uniform with securities previously issued and for the time being dealt in or quoted on a recognised stock exchange,

but, subject as aforesaid, this section shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.”.

Amendment
of sections 57
and 58.

21. In sections 57 and 58 of the principal Act, for the words “shares in or debentures of”, the words “securities of” shall respectively be substituted.

Substitution of
new section
for section 60.

22. For section 60 of the principal Act, the following section shall be substituted, namely:—

Registration
of prospectus.

“60. (1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto—

(a) any consent to the issue of prospectus and statement of an expert required under section 58; and

(b) in the case of a prospectus issued generally, also—

(i) a copy of every contract required by Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons indicated therein, any such adjustments as are mentioned in that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor;

(iii) and such other documents as may be prescribed:

Provided that where a company issues any foreign or Indian Depository Receipt, circular, information memorandum or prospectus containing—

(A) price of the depository receipt issued or proposed to be issued;

(B) amount subscribed or expected to be subscribed;

(C) terms and conditions of conversion of deposit receipt into shares;

(D) other information and particulars of such Indian Depository Receipt,

such circular, information memorandum or prospectus shall also be filed along with the prospectus by the company or foreign company proposing to issue the Indian Depository Receipt:

Provided further that the information memorandum or the prospectus issued for subscription by Indian Depository Receipt, shall be governed by the law of the country in which the registered office of the company is situated.

(2) Every prospectus to which sub-section (1) applies shall, on the face of it,—

(a) state that a copy has been delivered for registration as required by this section; and

(b) specify any documents required by this section to be endorsed on or attached to the copy so delivered, or refer to statements included in the prospectus which specify those documents.

(3) The Registrar shall not register a prospectus unless the requirements of sections 55, 56, 57 and 58 and sub-sections (1) and (2) of this section have been complied with and the prospectus is accompanied by the consent in writing of the person, if any, named therein as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or intended company, to act in that capacity.

(4) A copy of every prospectus which has been filed for registration with the Registrar shall simultaneously be filed with the Securities and Exchange Board of India.

(5) No prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered for registration; and if a prospectus is so issued, it shall be deemed to be a prospectus, a copy of which has not been delivered under this section to the Securities and Exchange Board of India or the Registrar.

(6) If a prospectus is issued without a copy thereof being delivered under this section to the Securities and Exchange Board of India or the Registrar or without the copy so delivered having endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees."

23. For section 61 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 61.

"61. A company shall not, at any time, vary the terms of a contract referred to in the prospectus except subject to the approval of, or except on authority given by, the company in general meeting."

Terms of contract mentioned in prospectus not to be varied.

24. In section 62 of the principal Act,—

Amendment of section 62.

(a) in sub-section (1), for the words "shares in or debentures of", the words "securities of" shall be substituted;

(b) for the words "shares or debentures", wherever they occur, the word "securities" shall be substituted.

25. In section 63 of the principal Act, in sub-section (1), for the words "two years, or with fine which may extend to fifty thousand rupees or with both", the words "two years, and with fine which may extend to one lakh rupees" shall be substituted.

Amendment of section 63.

26. In section 64 of the principal Act,—

Amendment of section 64.

(a) in sub-section (1),—

(i) for the words "any shares in or debentures of", the words "any securities of" shall be substituted;

(ii) for the words "shares or debentures", wherever they occur, the word "securities" shall be substituted;

(b) in sub-sections (2) and (3), for the words "shares or debentures" wherever they occur, the word "securities" shall be substituted.

27. For section 67 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 67.

"67. (1) Any reference in this Act or in the articles of a company to offering securities to the public or to invitations to the public to subscribe for securities shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (5), be construed as including a reference to offering

Construction of references to offering securities to public, etc.

them or to invitations to subscribe for them to any section of the public, whether selected as members or holders of the securities of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for securities shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or holders of the securities of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances—

(a) as not being calculated to result, directly or indirectly, in the securities becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation:

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for securities is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to the non-banking financial companies or public financial institutions specified in section 4A.

(4) Notwithstanding anything contained in sub-section (3), the Securities and Exchange Board of India shall, in consultation with the Reserve Bank of India, specify, by notification in the Official Gazette, the guidelines in respect of offer or invitation made to the public by a public financial institution specified under section 4A or non-banking financial company referred to in clause (f) of section 45-I of the Reserve Bank of India, 1934.

2 of 1934.

(5) Without prejudice to the generality of sub-section (3), a provision in a company's articles prohibiting invitations to the public to subscribe for securities shall not be taken as prohibiting the making to members or debenture-holders of an invitation which can properly be regarded in the manner set-forth in that sub-section.

(6) Where any question arises as to the offer of any securities by a company, including the right to restrain any offer or issue it shall be decided by the company.

(7) The provisions of this Act relating to private companies shall be construed in accordance with the provisions of this section."

Substitution
of new section
for section 68.

28. For section 68 of the principal Act, the following section shall be substituted, namely:—

Penalty for
fraudulently
inducing
persons to
invest money.

"68. (1) Any person who either by knowingly or recklessly making any statement, promise or forecast which is false, deceptive or misleading or by any dishonest concealment of material facts, induces or attempts to induce another person to enter into, or to offer to enter into,—

(a) any agreement for or with a view to acquiring, disposing of, subscribing for, or underwriting securities; or

(b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities, or by reference to fluctuations in the value of securities,

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years, and also with fine which may extend to one lakh rupees.

(2) Without prejudice to the provisions contained in sub-section (1) or any other law for the time being in force, the person referred to in that sub-section who makes any statement, a promise or forecast which is false, deceptive or misleading or makes dishonest concealment referred to in that sub-section shall, on an order made by the Tribunal on an application made by the Central Government, be liable to a penalty which shall not be less than twice the amount raised on account of such statement, promise, forecast or inducement made under sub-section (1) and such penalty may be recovered from such person and his liability for this purpose shall be unlimited.

(3) The Tribunal shall refund the money to the person or persons who entered into an agreement under sub-section (1) out of the amount of penalty so recovered under sub-section (2)."

29. For section 68A of the principal Act, the following section shall be substituted, namely:—

"68A. (1) Any person who—

(a) makes, in a fictitious name or description, an application to a company for acquiring, or subscribing for, any securities therein; or

(b) makes multiple applications to a company in different names or in different combinations of his name or his surname for acquiring or subscribing for, any securities of such company; or

(c) otherwise induces a company to allot, or register any transfer of securities therein to him or any other person in a fictitious name or description, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend upto five years and also with fine which may extend to fifty thousand rupees.

(2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by the company and in every form of application for securities, which is issued by the company to any person."

30. For section 69 of the principal Act, the following section shall be substituted, namely:—

'69. (1) No allotment shall be made of any securities of a company offered to the public for subscription, unless the amount stated in the prospectus as the minimum amount which, has been subscribed, and the sum payable on an application for the amount so stated has been paid to, and received by, the company, whether in cash or by cheque, or other instrument which has been paid by the applicant.

(2) In the event of any contravention of sub-section (1), every promoter, director or other person who is knowingly responsible for such contravention, shall be punishable with imprisonment for a term, which may extend to two years and shall also be liable to fine which may extend to ten thousand rupees.

(3) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in money, and is in this Act referred to as "the minimum subscription".

(4) The amount payable on an application on each security shall not be less than twenty-five per cent. of the nominal amount of the security.

Substitution of new section for section 68A.

Punishment for personation for acquisition, etc., of securities.

Substitution of new section for section 69.

Prohibition of allotment unless minimum subscription received.

(5) All moneys received from applicants for securities shall be deposited and shall continue to be kept deposited in a separate account in a scheduled bank until the entire amount payable on applications for securities in respect of the minimum subscription has been received by the company, and where such amount has not been received by the company within the period specified for repayment of amount without interest under sub-section (7), all moneys received from applicants for shares shall be returned in accordance with the provisions of that sub-section.

(6) In the event of any contravention of the provisions of sub-section (5), the company, every promoter and officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees and if, any such money is not so repaid within six months from the expiry of the eighth day also be punishable with imprisonment for a term which may extend to two years.

(7) If the minimum subscription is not received on the expiry of such period as may be prescribed after the first issue of the prospectus, all moneys received from applicants for securities shall forthwith be repaid to them without interest; and if any such money is not so repaid within eight days thereafter, the company, every promoter and every officer of the company who is in default shall be jointly and severally liable to repay that money with interest at such rate as may be prescribed which shall not be lower than the prevailing bank rate, being the standard rate made public under section 49 of the Reserve Bank of India Act, 1934.

2 of 1934.

(8) Any condition purporting to require or bind any applicant for securities to waive compliance with any requirement of this section shall be void.

(9) Nothing in this section shall apply to a public financial institution.

Amendment
of section 70.

31. In section 70 of the principal Act, after sub-section (7), the following sub-section shall be inserted, namely:—

“(8) Nothing contained in this section shall apply on or after the commencement of the Companies (Amendment) Act, 2003.”.

Substitution of
new section
for section 71.

32. For section 71 of the principal Act, the following section shall be substituted, namely:—

Effect of
irregular
allotment.

“71. (1) An allotment made by a company to an applicant, in contravention of the provisions of section 69, shall be voidable at the instance of the applicant, within two months from the date of such allotment.

(2) The allotment shall be voidable as aforesaid, notwithstanding that the company is in the course of being wound up.

(3) If any director of a company knowingly contravenes, or wilfully authorises or permits the contravention of, any of the provisions of section 69 with respect to allotment, he shall, without prejudice to his being liable for fine under that section, be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby:

Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment.”.

Substitution of
new section
for section 72.

33. For section 72 of the principal Act, the following section shall be substituted, namely:—

Applications
for, and
allotment of,
securities.

“72. (1) (a) No allotment shall be made of any securities of a company in pursuance of a prospectus issued generally, and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the fifth day after the date on which the prospectus is first so issued or such later time, if any, as may be specified in the prospectus:

Provided that where, after a prospectus is first issued generally, a public notice is given by some person responsible under section 56 for the prospectus which has the effect of excluding, limiting or diminishing his responsibility, no allotment shall be made until the beginning of the fifth day after the date on which such public notice is first given.

(b) Nothing in the foregoing proviso shall be deemed to exclude, limit or diminish any liability that might be incurred in the case referred to therein under the general law or this Act.

(c) The beginning of the fifth day or such later time as is mentioned in the first paragraph of clause (a), or the beginning of the fifth day mentioned in the proviso to that clause, as the case may be, is hereinafter in this Act referred to as "the time of the opening of the subscription lists".

(2) In sub-section (1), the reference to the day on which the prospectus is first issued generally, shall be construed as referring to the day on which it is first so issued as a newspaper advertisement or in any other manner in accordance with the provisions of sub-section (3) of section 56.

(3) The validity of an allotment shall not be affected by any contravention of the foregoing provisions of this section, but, in the event of any such contravention, the company and every officer of the company, who is in default, shall be punishable with fine which may extend to fifty thousand rupees.

(4) In the application of this section to a prospectus offering securities for sale, sub-sections (1) to (3) shall have effect with the substitution of references to sale for references to allotment, and with the substitution for the reference to the company and every officer of the company who is in default of a reference to any person by or through whom the offer is made and who is knowingly guilty of, or wilfully authorises or permits, the contravention.

(5) An application for the securities of a company, which is made in pursuance of a prospectus issued generally shall be revocable—

(a) within five days of making an application but not later the date of closure of the public issue; or

(b) within five days of issue of public notice having the effect under section 62 of excluding, limiting or diminishing the responsibility of the person responsible for its issue.

(6) Notwithstanding anything contained in sub-section (5), the promoters as defined in clause (a) of sub-section (6) of section 62 or directors or relatives or associates of such promoters or directors as mentioned in the prospectus, if they have applied in pursuance of the prospectus, shall not be entitled to revoke such applications.

34. For section 73 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 73.

"73. (1) Every company, intending to offer securities to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for such securities to be dealt with in on the stock exchange or each such stock exchange.

Allotment of securities to be dealt in on stock exchange.

(2) Where a prospectus, whether issued generally or not, states that an application under sub-section (1) has been made for permission for the securities offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists:

Provided that where an appeal against the decision of any recognised stock exchange refusing permission for the securities to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956, such allotment shall not be void until the dismissal of the appeal. 42 of 1956.

(3) Where the permission has been granted by a recognised stock exchange for dealing in any securities, the company shall make the allotment of securities within such period as may be specified by the Securities and Exchange Board of India.

(4) Where permission has not been applied for under sub-section (1) or, such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than six per cent. and not more than twenty per cent. as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(5) Where permission has been granted by a recognised stock exchange or stock exchanges for dealing in any securities in such stock exchange or each such stock exchange and the moneys received from applicants for securities are in excess of the aggregate of the application moneys relating to the securities in respect of which allotments have been made, the company shall repay the moneys to the extent of such excess forthwith without interest, and if such money is not repaid within eight days from the day the company becomes liable to pay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than six per cent. and not more than twenty per cent. as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(6) All moneys received as aforesaid shall be kept in a separate bank account maintained with a scheduled bank only until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid, or has not been granted, be repaid within the time and in the manner specified in sub-section (4).

(7) If default is made in complying with the provisions of sub-section (5), the company and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees, and where repayment is not made within six months from the expiry of the eighth day, also with imprisonment for a term which may extend to two years.

(8) If default is made in complying with sub-section (6), the company and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees and where repayment is not made within six months from the expiry of the eighth day, also with imprisonment for a term which may extend to two years.

(9) Moneys standing to the credit of the separate bank account referred to in sub-section (6) shall not be utilised for any purpose other than the following purposes, namely:—

(a) adjustment against allotment of securities, where the securities have been permitted to be dealt in on the stock exchange specified in the prospectus; or

(b) repayment of moneys received from applicants in pursuance of the prospectus, where securities have not been permitted to be dealt in on the stock exchange or each stock exchange specified in the prospectus, as the case may be, or, where the company is for any other reason unable to make the allotment of securities:

Provided that the money standing to the credit of the separate bank account shall not be utilised for any of the purposes specified in clause (a) or clause (b) unless a charge is created on the assets of the company in favour of the debenture holder in case such company has issued debentures.

(10) Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

(11) For the purposes of this section, it shall be deemed that permission has not been granted if the application for permission, where made, has not been disposed of within the time specified in sub-section (2).

(12) If default is made in complying with the proviso to sub-section (9), every officer of the company who is in default shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and also with fine which shall not be less than that amount raised by the issue of the debentures but which may extend to three times the amount raised by the debentures.

(13) This section shall have effect—

(a) in relation to any securities agreed to be taken by a person underwriting an offer thereof by a prospectus, as if he had applied therefor in pursuance of the prospectus; and

(b) in relation to a prospectus offering securities for sale, with the following modifications, namely:—

(i) references to sale shall be substituted for references to allotment;

(ii) the persons by whom the offer is made, and not the company, shall be liable under sub-section (4) to repay money received from applicants, and references to the company's liability under that sub-section shall be construed accordingly; and

(iii) for the reference in sub-section (7) to the company and every officer of the company who is in default, there shall be substituted a reference to any person by or through whom the offer is made and who is knowingly guilty of, or wilfully authorises or permits, the default.

(14) No prospectus shall state that application has been made for permission for the securities offered thereby to be dealt in on any stock exchange, unless it is a recognised stock exchange.”

Amendment
of section 75.

35. In section 75 of the principal Act,—

(a) in sub-section (1),—

(i) in the opening portion, for the words “its shares”, the words “its securities” shall be substituted;

(ii) in clause (a),—

(a) for the words “shares comprised”, the words “securities comprised” shall be substituted;

(b) for the words “each share”, the words “each security” shall be substituted;

(c) in the proviso, for the words “any shares”, the words “any securities” shall be substituted;

(iii) in clause (b),—

(A) for the words “in the case of shares”, the words “in the case of securities” shall be substituted;

(B) for the words “amount of shares so allotted”, the words “amount of securities so allotted” shall be substituted;

(iv) in clause (c),—

(A) in sub-clause (i), for the words “shares comprised”, the words “securities comprised” shall be substituted;

(B) for sub-clause (ii), the following sub-clause shall be substituted, namely:—

“(ii) in the case of issue of securities at a discount, a copy of the resolution passed by the company authorising such issue together with a copy of the order of the Tribunal sanctioning the issue.”;

(b) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) Nothing in this section shall apply to the issue and allotment by a company of securities which under the provisions of its articles were forfeited or cancelled for non-payment of calls.”.

Substitution of
new section
for section 76.

Power to pay
certain
commissions
and prohibi-
tion of
payment of all
other
commissions,
discounts, etc.

36. For section 76 of the principal Act, the following section shall be substituted, namely:—

“76. (1) A company may pay a commission which shall not exceed such percentage as may be prescribed, to any person in consideration of:—

(a) his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any securities of the company; or

(b) his procuring or agreeing to procure subscriptions, whether absolute or conditional, for any securities of the company.

(2) Save as aforesaid and save as provided in section 79, no company shall allot any of its securities or apply any of its moneys, either directly or indirectly, in payment of any commission, discount or allowance, to any person in consideration of commission specified in sub-section (1).

(3) Nothing in this section shall affect the power of any company to pay such brokerage as it had so far been lawful for a company to pay.

(4) A vendor to, promoter of, or other person who receives payment in securities, or money from, a company shall have and shall be deemed always to have had power to apply any part of the securities, or money so received in payment of any commission the payment of which, if made directly by the company, would have been legal under this section.

(5) For the removal of doubts, it is hereby declared that no commission shall be paid under sub-section (1) to any person on securities which are not offered to the public for subscription:

Provided that where a person has subscribed or agreed to subscribe under sub-section (1) for any securities of the company and before the issue of the prospectus, any other person or persons has or have subscribed for any or all of those securities and that fact together with the aggregate amount of commission payable under this section in respect of such subscription is disclosed in such prospectus, then, the company may pay commission to the first-mentioned person in respect of such subscription.

(6) If default is made in complying with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.”.

37. In section 77 of the principal Act,—

Amendment
of section 77.

(a) in sub-section (1), for the words “shall have power to buy its own shares”, the words “shall have power to buy directly or indirectly its own shares” shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) A company (hereafter referred to as purchasing company) shall be deemed to have purchased its own shares if—

(a) the purchasing company makes payment to a stock broker or sub-broker referred to in section 12 of the Securities and Exchange Board of India Act, 1992 for purchase of securities of another company; and

(b) such stock broker or sub-broker purchases the securities of the purchasing company,—

(i) out of the payments so received by such stock broker or sub-broker from the purchasing company; or

(ii) at any time during the period when such payments were received by the broker or sub-broker from the purchasing company and such payments were not returned to the purchasing company and no separate account of funds of the purchasing company so received was kept by such broker or sub-broker.”;

(c) in sub-section (2), for the words “any shares”, the words “any securities” shall be substituted;

(d) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) If a company acts in contravention of sub-section (1) or sub-section (2) or sub-section (3), the company, and every officer of the company who is in default, shall be punishable with fine which shall be three times the aggregate price of its securities purchased by the company or face value of its securities, whichever is higher, and every such officer in default shall also be punishable with imprisonment for a term not less than three months, but which may extend to two years.”.

Amendment
of section 78.

38. In section 78 of the principal Act, in sub-section (2), after clause (d), the following clause shall be inserted, namely:—

“(e) for buy back of securities under section 77.”.

Substitution of
new section
for section 79.

39. For section 79 of the principal Act, the following section shall be substituted, namely:—

Power to issue
securities at
discount.

‘79. (1) A company shall not issue securities at a discount except as provided in this section.

(2) A company may issue at a discount securities in the company of a class already issued, if the following conditions are fulfilled, namely:—

(i) the issue of the securities at a discount is authorised by a resolution passed by the company in a general meeting, and sanctioned by the Central Government;

(ii) the resolution specifies the maximum rate of discount at which the securities are to be issued:

Provided that no such resolution shall be sanctioned by the Central Government if the maximum rate of discount specified in the resolution exceeds ten per cent. unless the Central Government is of the opinion that a higher percentage of discount may be allowed in the special circumstances of the case;

(iii) not less than one year has at the date of the issue elapsed since the date on which the company was entitled to commence business; and

(iv) the securities to be issued at a discount are issued within two months after the date on which the issue is sanctioned by the Central Government or within such extended time as the Central Government may allow.

(3) Where a company has passed a resolution authorising the issue of securities at a discount it may apply to the Central Government for an order sanctioning the issue; and on any such application, the Central Government, having regard to all the circumstances of the case, if it thinks proper so to do, may make an order sanctioning the issue on such terms and conditions as it thinks fit:

Provided that in the case of revival and rehabilitation of sick industrial companies under Chapter VIA, the provisions of this section shall have effect as if for the words “Central Government”, the word “Tribunal” had been substituted.

(4) Every prospectus relating to the issue of the securities shall contain particulars of the discount allowed on the issue of the securities or of so much of that discount as has not been written off at the date of the issue of the prospectus.

(5) If default is made in complying with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.’

Amendment
of section 80.

40. In section 80 of the principal Act, in sub-section (6), for the words “which may extend to ten thousand rupees,” the words “which shall not be less than ten thousand rupees but which may extend to three times” the face value of the preference shares in respect of which the default has been made” shall be substituted.

Amendment
of section
80A.

41. In section 80A of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Notwithstanding anything contained in the terms of issue of any preference shares, every preference share issued before the commencement of the Companies (Amendment) Act, 1996 and which is not redeemable before the expiry of ten years from the date of issue thereon in accordance with the terms of its issue and which has not been redeemed before such commencement, shall be redeemed by the company on

the date on which such share is due for redemption or within a period not exceeding ten years from the date of such commencement, whichever is earlier:

Provided that where a company is not in a position to redeem any such share within the period aforesaid and to pay the dividend, if any, due thereon (such shares being hereinafter referred to as unredeemed preference shares), it may, with the approval of the Tribunal, on a petition made by it in this behalf and notwithstanding anything contained in this Act, issue further redeemable preference shares equal to the amounts due (including the dividend thereon), in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, the unredeemed shares shall be deemed to have been redeemed.”

42. For section 81 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 81.

‘81. (1) Where at any time after the expiry of two years of the formation of a company, it is proposed to increase the subscribed capital of the company by allotment of further shares, then,—

Further issue of capital.

(a) such further shares shall be offered to the persons who, at the date of the offer, are holders of the equity shares of the company, in proportion, as nearly as circumstances admit, to the capital paid-up on those shares at that date;

(b) the offer aforesaid shall be made by notice containing such particulars as may be prescribed, and specifying the number of shares offered and limiting a time, not being less than fifteen days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

(c) unless the articles of the company otherwise provide, the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (b) shall contain a statement of this right;

(d) after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of directors may dispose of the same in such manner as they think most beneficial to the company.

Explanation.—For the purposes of this sub-section, “equity share capital” and “equity shares” have the same meaning as in section 85.

(2) Where further shares are offered to the members under sub-section (1) or to any other person at a premium, the amount of such premium shall be approved by the company by special resolution.

(3) Notwithstanding anything contained in sub-section (1), further shares may be offered to any person whether or not those persons include the persons referred to in clause (a) of sub-section (1) in any manner whatsoever—

(i) if a special resolution to that effect, and approving the premium, if any, is passed by the company in general meeting, or

(ii) where no such special resolution is passed if the votes cast in favour of the proposal contained in the resolution moved in that general meeting (including the casting vote, if any, of the chairman), exceed the votes, if any, cast against the proposal by, members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy and the Tribunal is satisfied, on an application made by the company in this behalf, that the proposal is beneficial to the company:

Provided that no vote shall be cast by any person in favour of the special resolution referred to in clause (i) when shares are proposed to be offered to such person.

(4) Nothing in clause (c) of sub-section (1) shall be deemed—

(a) to extend the time within which the offer should be accepted; or

(b) to authorise any person to exercise the right of renunciation for a second time, on the ground that the person in whose favour the renunciation was first made has declined to take the shares comprised in the renunciation.

(5) Notwithstanding anything contained in the foregoing provisions of this section, a company may, at any time, increase its subscribed capital by giving an option to its employees, officers or working directors to purchase its securities (hereafter in this section referred to as the "employees' stock option"), pursuant to a scheme of option framed by the company in accordance with the provisions of this section and such other conditions as may be prescribed.

(6) A company shall be entitled to make an issue of its securities to the persons referred to in sub-section (5), under the scheme of employees' stock option at prevailing market price or price specified in the offer.

(7) Every employees' stock option shall be made,—

(a) after the conditions specified in clauses (i) and (ii) of sub-section (3) are satisfied;

(b) in such a manner that the amount of issue of shares under the employees' stock option and the share in the capital does not exceed more than five per cent. of the amount of total capital after such issue;

(c) in accordance with such conditions as may be prescribed;

(d) in the case of listed companies, in accordance with such conditions which may be specified in the regulations made under the Securities and Exchange Board of India Act, 1992.

15 of 1992.

(8) Nothing in this section shall apply—

(a) to the increase of subscribed capital when—

(i) such increase is by conversion of debentures or loans into shares;

(ii) subscription of share in the company is under a scheme of employees' stock option;

(b) to the increase of subscribed capital of a public company caused by the exercise of an option attached to debentures issued or loans raised by the company—

(i) to convert such debentures or loans into shares in the company,
or

(ii) to subscribe for shares in the company:

Provided that the terms of issue of such debentures or the term of such loans include a term providing for such option and such term,—

(a) either has been approved by the Central Government before the issue of debentures or the raising of the loans, or is in conformity with the rules, if any, made by that Government in this behalf; and

(b) in the case of debentures or loans other than debentures issued to, or loans obtained from, the Government or any institution specified by the Central Government in this behalf, has also been approved by a special resolution passed by the company in general meeting before the issue of the debentures or the raising of the loans:

Provided further that no approval under clauses (a) and (b) of the first proviso shall be required in the case of scheduled banks and public financial institutions*.

43. For section 82 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 82.

“82. The securities (including shares, debentures or other interest of any member in a company) shall be movable property, transferable in the manner provided by the articles of the company.”.

Nature of securities.

44. For section 83 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 83.

“83. Each security of a company (including a share in a company having a share capital) shall be distinguished by its appropriate number:

Numbering of securities.

Provided that nothing in this section shall apply to the securities held with a depository.”.

45. After section 83 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 83A.

“83A. (1) Every company shall reconcile, within such period as may be prescribed, the securities issued by it with the securities distinguished by its appropriate number and securities held with a depository and the total number of securities distinguished by its appropriate number and securities held with the depository shall not exceed the total number of securities issued by such companies.

Obligation to reconcile securities with depository.

(2) If default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be punishable with fine not less than fifty thousand rupees but which may extend to three times the face value of securities found in excess of the issued capital of the company.”.

46. In section 84 of the principal Act,—

Amendment of section 84.

(a) in sub-section (3),—

(i) for the words “ten thousand rupees”, the words “one lakh rupees” shall be substituted;

(ii) for the words “six months”, the words “two years,” shall be substituted;

(b) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) The provisions of this section shall also apply to derivatives, options and shares with differential voting rights.”.

47. In section 87 of the principal Act, for sub-section (1), the following shall be substituted, namely:—

Amendment of section 87.

“(1) Subject to the provisions of section 89 and sub-section (2) of section 92, every member of a company limited by shares and holding any equity share capital therein,—

(a) shall have a right to vote, in respect of such capital, on every resolution placed before the company; and

(b) his voting right on a poll shall be in proportion to his share of the paid up equity capital of the company or in accordance with the rules made under sub-clause (ii) of clause (a) of section 86:

Provided that the Central Government may, by rules made in this behalf, specify a class or classes of companies in which the voting right in respect of preference shares shall not accrue or accrue subject to such conditions as may be prescribed.”.

Amendment
of section 93.

48. In section 93 of the principal Act, the following proviso shall be inserted, namely:—

“Provided that a company may pay different dividends on the shares in the equity share capital with differential rights as to dividends, voting or otherwise referred to in sub-clause (ii) of clause (a) of section 86.”.

Amendment
of section 94.

49. In section 94 of the principal Act, in sub-section (1),—

(i) for clause (a), the following clause shall be substituted, namely:—

“(a) increase its authorised share capital by such amount as it thinks expedient by creating new shares;”;

(ii) clause (c) shall be omitted.

Amendment
of section 95.

50. In section 95 of the principal Act,—

(a) in sub-section (1), clause (b) shall be omitted;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) If default is made in complying with the provisions of sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine equivalent to the fee payable along with the notice or five thousand rupees, whichever is more.”.

Amendment
of section 97.

51. In section 97 of the principal Act, in sub-section (1), the words “whether its shares have or have not been converted into stock” shall be omitted.

Amendment
of section
107.

52. In section 107 of the principal Act, in sub-section (5), for the words “five hundred rupees”, the words “five thousand rupees” shall be substituted.

Substitution of
new section
for section
108.

53. For section 108 of the principal Act, the following section shall be substituted, namely:—

Transfer not
to be
registered in
certain cases.

“108. (1) A company shall not register a transfer of securities of the company, unless a proper instrument of transfer duly stamped, dated and executed by or on behalf of the transferor and by or on behalf of the transferee and specifying the name, address and occupation, if any, of the transferee, has been delivered to the company, within six months (excluding the period of book closure) from the date of execution, along with the certificate relating to the securities, or if no such certificate, is in existence, along with the letter of allotment of the securities :

Provided that where, on an application in writing made to the company by the transferee and bearing the stamp required for an instrument of transfer, it is proved to the satisfaction of the Board of directors that the instrument of transfer signed by or on behalf of the transferor and by or on behalf of the transferee along with or without the certificate relating to securities or if no such certificate is in existence, along with the letter of allotment of the securities has been lost, the company may register the transfer on such terms as to indemnity as the Board may think fit:

Provided further that nothing in this section shall prejudice any power of the company to register any person as holder of security to whom the right to any security of the company has been transmitted by operation of law but no such transmission shall be refused to be registered except on the ground that it will result in contravention of the provisions contained in sub-clause (b) of clause (iii) of sub-section (1) of section 3.

(2) In the case of a company having no share capital, sub-section (1) shall apply as if the references therein to shares were references to the interest of the member in the company.

(3) Nothing contained in this section shall apply to transfer of security effected by the transferor and the transferee both of whom are entered as beneficial owners in the records of a depository.”

54. In section 108-I of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

Amendment
of section
108-I.

“(5) Nothing contained in sections 108A, 108B, 108C, 108D, 108E, 108F, 108G, 108H and in this section shall apply on or after the commencement of the Companies (Amendment) Act, 2003.”

55. In section 111 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

Amendment
of section
111.

“(1A) A private company shall not approve the transfer of any shares unless it is approved by all the shareholders at its meeting.”

56. In section 113 of the principal Act,—

Amendment
of section
113.

(a) in sub-section (1), in the proviso, the words “or transferred” shall be omitted;

(b) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) The provisions of this section relating to the issue of shares or debentures shall also, as far as may be, apply to the issue of derivatives, options and shares with differential voting rights.”

57. In section 114 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment
of section
114.

“(4) Nothing contained in this section shall apply on or after the commencement of the Companies (Amendment) Act, 2003.”

58. In section 115 of the principal Act, after sub-section (6), the following sub-section shall be inserted, namely:—

Amendment
of section
115.

“(7) Nothing contained in this section shall apply on or after the commencement of the Companies (Amendment) Act, 2003.”

59. In section 116 of the principal Act, the words “or of any such share warrant or coupon”, shall be omitted.

Amendment
of section
116.

60. In section 118 of the principal Act, in sub-section (1),—

Amendment
of section
118.

(a) in the opening portion, for the words “on payment—”, the words “on payment of such fee as may be prescribed.” shall be substituted;

(b) sub-clauses (a) and (b) shall be omitted.

61. In section 119 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:—

Amendment
of section
119.

“(5) If default is made, in respect of issue of debentures made on or after the commencement of the Companies (Amendment) Act, 2003, in complying with the provisions of this section,—

(a) every debenture trustee who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine, which shall not be less than the amount raised in the debenture issue, but which may extend to three times the amount raised from the debenture issue for the company;

(b) every officer of the company who is in default shall be punishable with fine which shall not be less than twice the amount raised in debenture issue which may extend to six times the amount so raised.”

62. In section 121 of the principal Act, sub-section (6) shall be omitted.

Amendment
of section
121.

Amendment
of section
123.

63. In section 123 of the principal Act, sub-section (4), shall be omitted.

Amendment
of section
127.

64. In section 127 of the principal Act, in sub-section (1), for the word "thirty" wherever it occurs, the word "sixty" shall be substituted.

Amendment
of section
128.

65. In section 128 of the principal Act, for the word "thirty", the word "sixty" shall be substituted.

Substitution of
new section
for section
133.

66. For section 133 of the principal Act, the following section shall be substituted, namely:—

Endorsement
of certificate
of registration
on debenture.

"133. (1) The company shall cause the fact of registration given under section 132, to be endorsed on every debenture certificate which is issued by the company and the payment of which is secured by the charge so registered:

Provided that nothing in this sub-section shall be construed as requiring a company to cause the fact of registration of any charge so given to be endorsed on any debenture certificate issued by the company before the charge was created.

(2) If any person knowingly delivers, or wilfully authorises or permits the delivery of, any debenture certificate which under the provisions of sub-section (1), is required to have been endorsed on it, he shall, without prejudice to any other liability, be punishable with fine which may extend to ten thousand rupees."

Substitution of
new section
for section
138.

67. For section 138 of the principal Act, the following section shall be substituted, namely:—

Company to
report
satisfaction
and procedure
thereafter.

"138. (1) The company shall give intimation in the prescribed form to the Registrar of the payment or satisfaction, in full, of any charge relating to the company and requiring registration under this Part, within thirty days from the date of such payment or satisfaction:

Provided that the Registrar may allow aforesaid intimation to be given within sixty days next following the expiry of the aforesaid period of thirty days on payment of such fee as may be prescribed if the company satisfies the Registrar that it had sufficient cause for not giving the intimation within the said period.

(2) The Registrar shall, on receipt of such intimation, and after being satisfied that it is complete in all respects, order that a memorandum of satisfaction shall be entered in the register of charges.

(3) Nothing in this section shall be deemed to affect the power of the Registrar to make an entry in the register of charges under section 139 otherwise than on receipt of an intimation from the company."

Amendment
of section
146.

68. In section 146 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) A company shall, on and from the thirtieth day after the date of its incorporation, have a registered office to which all communications and notices may be addressed."

Amendment
of section
149.

69. In section 149 of the principal Act,—

(a) after sub-section (2), the following proviso shall be inserted, namely:—

"Provided that nothing contained in this sub-section shall apply on or after the commencement of the Companies (Amendment) Act, 2003."

(b) for sub-section (2A), the following sub-section shall be substituted, namely:—

“(2A) A company having a share capital, whether or not it has issued a prospectus inviting the public to subscribe for its shares, shall not at any time commence any business unless—

(a) the company has approved the commencement of any such business by special resolution passed in that behalf by it in its general meeting; and

(b) there has been filed with the Registrar a duly verified declaration by one of the directors or the secretary or, where the company has not appointed a secretary, a secretary in whole-time practice, in the prescribed form, that clause (a) of this sub-section or, as the case may be, sub-section (2B) has been complied with.

(c) for sub-section (7), the following sub-section shall be substituted, namely:—

“(7) Nothing in this section shall apply to a Government company.”.

70. After section 152A of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 152AB.

“152AB. A company may, after the commencement of the Companies (Amendment) Act, 2003, in addition to the particulars of its members and holders of its debentures under sections 150, 151, 152 and 152A, keep a record of the particulars of its members and holders of its debentures as required under the said sections in computer floppies or diskettes, and in such other electronic mode as may be prescribed and also provide such safeguards, as may be prescribed:

Register and index of members and holders of securities to be in electronic form.

Provided that, except the manner of keeping particulars of members and holders of debentures of the company, the other provisions of this Part shall apply to the record to be kept on computer floppies or diskettes or other electronic mode as may be prescribed, as they are applicable to register and index of members and holders of debentures of the company.”.

71. For section 153 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 153.

“153. No notice of any trust, express, implied or constructive, other than mutual trusts and such other trusts, as may be notified, shall be entered on the register of members or of debenture holders.”.

Trust not to be entered on register.

72. For section 159 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 159.

“159. (1) Every company, whether having a share capital or not shall, within thirty days from the day on which each of the annual general meetings referred to in section 166 is held, prepare and file with the Registrar a return containing the particulars in such form, as may be prescribed, regarding—

Annual return to be made by a company.

(a) its registered office;

(b) the register of its members containing the names of five hundred members who hold the largest number of shares or the actual number of members, whichever is lower;

(c) the register of its debenture-holders containing the names of five hundred debenture-holders who hold the largest number of debentures or the actual number of debenture-holders, whichever is lower;

(d) its securities;

(e) its indebtedness;

(f) its directors, managing and whole-time directors, manager, secretary and chief accounts officer;

(g) the particulars relating to foreign depository receipts issued by the company;

(h) particulars of every employee who was in receipt of remuneration which is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children not less than two per cent. of the equity shares of the company.

(2) The return required to be filed under this section shall be in such form as may be prescribed or as near thereto as circumstances admit, and where the return is filed even though the annual general meeting has not been held on or before the latest day by which it should have been held in accordance with the provisions of this Act, the company shall file with the return a statement specifying the reasons for not holding the annual general meeting.

(3) A copy of the annual return to be filed with the Registrar under this section shall be signed by the managing director, if any, or signed both by the director and by the manager or secretary of the company, or where there is no manager or secretary, by two directors of the company:

Provided that where the annual return is filed by a public company, a copy of such annual return shall also be signed by a secretary in whole-time practice.

(4) Any reference in this section or in any prescribed form, to the day on which an annual general meeting is held or to the date of the annual general meeting shall, where the annual general meeting for any year has not been held, be construed as a reference to the latest day on or before which that meeting should have been held in accordance with the provisions of this Act.

(5) There shall also be filed with the Registrar along with the return a certificate signed by the signatories of the return, stating—

(a) that the return states the facts as they stood on the day of the annual general meeting aforesaid, correctly and completely;

(b) that since the date of the last annual return, the transfer of all shares and debentures and the issue of all further certificates of shares and debentures have been appropriately recorded in the books maintained for the purpose; and

(c) in the case of a private company also,—

(i) that the company has not, since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company;

(ii) that, where the annual return discloses the fact that the number of members of the company exceeds fifty, the excess consists wholly of persons who under sub-clause (b) of clause (iii) of sub-section (1) of section 3 are not to be included in reckoning the number of fifty; and

(iii) that the company has not invited or accepted deposits from the public, other than from its members, directors or their relatives.

(6) If a company fails to comply with the provisions contained in this section, the company and every officer of the company who is in default shall be punishable with fine equivalent to 0.001 per cent. of authorised capital or five hundred rupees for every day during which the default continues, whichever is more.”

73. In section 160 of the principal Act, after sub-section (2), the following proviso shall be inserted, namely:—
 “Provided that nothing contained in this section shall apply on or after the commencement of the Companies (Amendment) Act, 2003.”
 Amendment of section 160.
74. In section 161 of the principal Act, after sub-section (2), the following proviso shall be inserted, namely:—
 “Provided that nothing contained in this section shall apply on or after the commencement of the Companies (Amendment) Act, 2003.”
 Amendment of section 161.
75. In section 162 of the principal Act, after sub-section (2), the following proviso shall be inserted, namely:—
 “Provided that nothing contained in this section shall apply on or after the commencement of the Companies (Amendment) Act, 2003.”
 Amendment of section 162.
76. In section 163 of the principal Act, in sub-section (1), in the proviso, after the words “registered office is situate,” the words “or within any other city, town or village in which more than one-tenth of the total number of members entered in the register of members, reside” shall be inserted.
 Amendment of section 163.
77. In section 165 of the principal Act, after sub-section (10), the following proviso shall be inserted, namely:—
 “Provided that nothing contained in this section shall apply on or after the commencement of the Companies (Amendment) Act, 2003.”
 Amendment of section 165.
78. In section 169 of the principal Act,—
 (a) in sub-section (1), after the words “general meeting of the company”, the words “which shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office is situate” shall be inserted;
 (b) in sub-section (7), the *Explanation* shall be omitted.
 Amendment of section 169.
79. After section 169 of the principal Act, the following section shall be inserted, namely:—
 “169A. Notwithstanding anything contained in this Act, an annual general meeting or other general meeting may be held on any day being Sunday.”
 Insertion of new section 169A.
 Holding of annual general meeting or general meeting on Sunday.
- “80. In section 173 of the principal Act,—
 (a) in sub-section (2), for the words “or interest, if any therein, of every director and the manager, if any”, the words “or interest or the financial implications and specific nature of the interest of any director or his relatives or the manager, if any, in such a manner as to enable a shareholder to exercise his judgment in a meaningful manner” shall be substituted;
 (b) after sub-section (2), the following sub-section shall be inserted, namely:—
 “(24) Where as a result of the non-disclosure or insufficient disclosure being made by a director or manager, if any, benefit accrues to the director or his relatives or manager either directly or indirectly, the director or the manager shall hold such benefit in trust for the benefit of the company and he shall, without prejudice to any other penalty leviable under this Act or under any other law for the time being in force, be liable to indemnify the company or where such benefit cannot be

measured in terms of monetary value, compensate the company to the extent of the benefit received by him.”;

(c) after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) If a default is made in complying with the provisions of this section, every officer of the company who is in default shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine which shall not be less than ten thousand rupees.”.

Amendment
of section
175.

81. In section 175 of the principal Act, in sub-section (1), for the words “otherwise provide, the members”, the words “otherwise provide, the chairman of the Board, if any, shall preside over all the meetings of the company and where the chairman is absent, the members” shall be substituted.

Amendment
of section
176.

82. In section 176 of the principal Act, in sub-section (5), after clause (b), the following clause shall be inserted, namely:—

“(c) be made in favour of one or more persons alternatively, but not more than one form shall be executed.”.

Amendment
of section
188.

83. In section 188 of the principal Act, sub-section (6), shall be omitted.

Amendment
of section
189.

84. In section 189 of the principal Act, in sub-section (2), for clause (a), the following clause shall be substituted, namely:—

“(a) it has been duly specified as such in the notice calling the general meeting or other intimation has been given to the members regarding such resolution;”.

Amendment
of section
190.

85. In section 190 of the principal Act,—

(a) in sub-section (1), after the words “and the day of the meeting”, the words “together with a deposit of ten thousand rupees” shall be inserted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The deposit made under sub-section (1) shall be forfeited if the resolution in respect of which notice of intention is given under that sub-section is not supported by one per cent. of the total number of shareholders present and voting at the meeting.”.

Amendment
of section
192.

86. In section 192 of the principal Act,—

(a) in sub-section (3), for the words “request, on payment of one rupee”, the word “request” shall be substituted;

(b) in sub-section (4),—

(i) in clause (c), for the words “a managing director”, the words “a managing director or a whole-time director” shall be substituted;

(ii) sub-clause (ee) shall be omitted;

(c) in sub-section (5), for the words “two hundred rupees”, the words “five hundred rupees” shall be substituted;

(d) for sub-section (7), the following sub-section shall be substituted, namely:—

“(7) No resolution passed under this Act shall be effective and valid unless such resolution has been delivered to the Registrar for registration, along with the requisite fees and registration charges, if any, payable under this Act.”.

Amendment
of section
193.

87. In section 193 of the principal Act, in sub-section (6), for the words “five hundred rupees”, the words “five thousand rupees” shall be substituted.

88. In section 197 of the principal Act, in sub-section (2), for the words "five thousand rupees", the words "fifty thousand rupees" shall be substituted. Amendment of section 197.

89. In section 200 of the principal Act,—

(a) in sub-section (1), for the *Explanation*, the following *Explanation* shall be substituted, namely:— Amendment of section 200.

*'Explanation.—*For the purposes of this sub-section, the expression "tax" means income-tax, payable under the Income-tax Act, 1961.';

43 of 1961.

(b) sub-sections (2) and (3) shall be omitted.

90. In section 203 of the principal Act, in sub-section (8), for the words "shall be in addition to", the words "shall apply to every company and be in addition to" shall be substituted. Amendment of section 203.

91. For section 205 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 205.

'205. (1) No dividend shall be declared or paid by a company for any financial year except out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with those provisions and remaining undistributed, or out of both or out of moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government:

Dividend to be paid only out of profits.

Provided that every company shall, before declaring or paying dividend for any financial year, make provision, from out of the profits of that financial year or any other financial year or years, for depreciation to the extent not provided for by the company in the last ten previous financial years, and previous years' losses, if any.

(2) The Board of directors may declare interim dividend and the amount of dividend (including interim dividend) shall be deposited in a separate bank account within five days from the date of declaration of such dividend:

Provided that interim dividend declared once shall neither be revoked nor modified.

(3) The amount of dividend (including interim dividend) so deposited under sub-section (2), shall be used for payment of dividend only.

(4) The provisions contained in this section and sections 205A, 205C, 206, 206A and 207 shall, as far as may be, also apply to any interim dividend.

(5) For the purpose of sub-section (1), depreciation shall be provided either—

(a) to the extent specified in Schedule XIV; or

(b) on any other basis approved by the Central Government which has the effect of writing off by way of depreciation ninety-five per cent. of the original cost to the company of each such depreciable asset on the expiry of the specified period; or

(c) as regards any other depreciable asset for which no rate of depreciation has been laid down by this Act or any rules made thereunder, on such basis as may be approved by the Central Government by any general order published in the Official Gazette or by any special order in any particular case:

Provided that if any asset is sold, discarded, demolished or destroyed for any reason before depreciation of such asset has been provided for in full, the excess, if any, of the written down value of such asset over its sale proceeds or, as the case may be, its scrap value, shall be written off in the financial year in which the asset is sold, discarded, demolished or destroyed.

(6) The dividend declared under sub-section (1) shall be paid to the registered shareholder or to his order or to his bankers and when the dividend is payable to the bankers, no separate application need be filed by the bankers for payment of such dividend.

(7) Notwithstanding anything contained in sub-section (1), no dividend shall be declared or paid by a company for any financial year out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (5), except after the transfer to the reserves of the company of such percentage of its profits for that year, not exceeding ten per cent. as may be prescribed:

Provided that nothing in this sub-section shall be deemed to prohibit the voluntary transfer by a company of a higher percentage of its profits to the reserves in accordance with such rules as may be made by the Central Government in this behalf.

(8) Where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in the previous financial year and transferred by it to the reserves, such declaration of dividend shall be made only in accordance with a resolution passed at the meeting of the Board with the consent of all the directors present and with the prior approval of the financial institutions which have made term loans to the company and thereafter in accordance with a special resolution passed by shareholders in the annual general meeting. Or in accordance with the provisions contained in sub-section (3) of section 205A.

(9) Dividend shall be paid only in the bank accounts of the shareholders from such date and in such manner as may be prescribed:

Provided that nothing in this sub-section shall be deemed to prohibit the capitalisation of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares, or paying up any amount, for the time being unpaid, on any shares held by the members of the company:

Provided further that reserves created by revaluation of company's assets shall not be used by it for the issue of bonus shares.

(10) No company shall give, or no shareholder (including any proxy given by him) shall demand or accept, any gift either at any general meeting or otherwise in lieu of or in addition to the dividend payable under this section.

(11) For the purposes of this section—

(a) "specified period", in respect of any depreciable asset, shall mean the number of years at the end of which at least ninety-five per cent. of the original cost of that asset to the company will have been provided for by way of depreciation if depreciation were to be calculated in accordance with the provisions of section 350;

(b) till such time the manner of payment of dividend is prescribed under sub-section (9), any dividend payable in cash may be paid to the banker on behalf of the shareholder or by cheque or warrant sent through the post directed to the registered address of the shareholder entitled to the payment of the dividend, or in the case of joint shareholders, to the registered address of that one of the joint shareholders which is first named on the register of members, or to such person and to such address as the shareholders or the joint shareholders may in writing direct.

(c) "gift" does not include any discount coupon or any food or beverages offered at any general meeting.

(12) Where the provisions of sub-section (10) are contravened, the company and every officer of the company in default, and the shareholder concerned, shall be liable to fine which may extend to ten times the value of the gift given or demanded and accepted.'

92. In section 206A of the principal Act, after clause (b), the following clause shall be inserted, namely:—

Amendment
of section
206A.

“(c) allot, in relation to such shares, any shares offered under clause (a) of sub-section (1) of section 81, to any director or officer of the company who shall within thirty days after the allotment, dispose of and distribute proceeds thereof to the persons who are entitled thereto.”

93. In section 209 of the principal Act,—

Amendment
of section
209.

(a) in sub-section (1), after clause (d), the following clause shall be inserted, namely:—

“(e) in the case of a company dealing in goods, the details of goods bought and sold during the year (other than goods bought and sold on retail basis), the particulars of the persons with whom such transactions were done during the financial year and the details of the stock of goods remaining at the end of the financial year.”;

(b) in sub-section (6), for clause (a), the following clause shall be substituted, namely:—

“(a) where the company has a managing director, manager, whole-time director in charge of finance or the chief accounts officer, such managing director, manager, whole-time director in charge of finance or the chief accounts officer and all officers and other employees but excluding bankers, auditors and legal advisers; and”.

94. In section 210 of the principal Act,—

Amendment
of section
210.

(a) in sub-section (1), after clause (b), the following proviso shall be inserted, namely:—

“Provided that a holding company shall have the option to prepare consolidated accounts under section 212, that is to say, the balance sheet, profit and loss account and other related statements for itself and its subsidiary or subsidiaries, and if it does so, it shall be sufficient compliance of this sub-section if such accounts are laid at its annual general meeting.”;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The annual accounts of the company shall state the derivatives, options and shares with different voting rights in the balance sheet and they shall be categorised as quasi-equity and disclose the predominant character of the security and voting rights embedded in the security.”.

95. In section 211 of the principal Act,—

Amendment
of section
211.

(a) in sub-section (1), for the words “general instructions for the preparation of balance sheet”, the words “general instructions and accounting standards for the preparation of balance sheet” shall be substituted;

(b) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) For the purposes of this section, except where the context otherwise requires, any reference to a balance sheet or profit and loss account shall include,—

(i) in the case of a holding company, the consolidated balance sheet or profit and loss account where such holding company opts to prepare such consolidated balance sheet or profit and loss account, pursuant to the proviso to sub-section (1) of section 210; and

(ii) the notes to the balance sheet or profit and loss account or documents annexed thereto, giving information required by this Act, and allowed by this Act to be given in the form of such notes or documents.”

Amendment
of section
212.

96. In section 212 of the principal Act, in sub-section (10), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that nothing contained in this section shall apply to a holding company, where such holding company opts to prepare consolidated accounts, for itself and its subsidiaries pursuant to the proviso to sub-section (1) of section 210.”

Insertion of
new section
212A.

97. After section 212 of the principal Act, the following section shall be inserted, namely:—

Preparation of
consolidated
accounts.

“212A. (1) Where a company is a holding company in relation to one or more of its subsidiaries, the directors shall, instead of preparing separate annual accounts for itself and for each of its subsidiary companies, prepare annual accounts for itself and its subsidiaries (hereinafter in this section referred to as consolidated accounts) with effect from such date as the Central Government may direct, by notification in the Official Gazette, to prepare the consolidated accounts and place before the annual general meeting of the holding company:

Provided that a holding company may opt to prepare consolidated accounts for itself and its subsidiaries and place them before its annual general meeting so long the notification referred to in this section is not issued by the Central Government:

Provided further that where a holding company chooses to prepare consolidated accounts under this sub-section, it shall not be necessary for the holding company to attach the documents relating to the subsidiary or subsidiaries to its balance sheet under section 212:

(2) The consolidated accounts shall be in the prescribed format comprising,—

(a) a consolidated balance sheet dealing with the state of affairs of the holding company and its subsidiaries; and

(b) a consolidated profit and loss account dealing with the profit and loss of the holding company and its subsidiaries.

(3) The consolidated accounts shall give a true and fair view of the state of affairs as at the end of the financial year, of all the subsidiaries included in the consolidated accounts as a whole, so far as it concerns members of the holding company.

(4) The consolidated accounts shall comply with the provisions of Schedule VI as to the form and content of the consolidated balance sheet and profit and loss account and additional information to be provided by way of notes to the accounts.

(5) If compliance with any of the provisions of this section is inconsistent with the requirement to give a true and fair view, for any reason, the directors depart from such provision to the extent necessary to give a true and fair view and the particulars of any such departure, the reasons for it and its effect, shall be given in a note to the accounts.”

Amendment
of section
215.

98. In section 215 of the principal Act, in sub-section (1), in clause (ii), for the words “manager or secretary”, the words “chief accounts officer or manager or secretary” shall be substituted.

99. After section 215 of the principal Act, the following section shall be inserted, namely:

Insertion of new section 215A.

Chief accounts officer.

"215A. (1) Every public company having paid up share capital of three crore rupees or more, as may be prescribed, shall appoint a whole-time qualified accounts officer to be known as the chief accounts officer, who shall either be a member of the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 or a member of the Institute of Cost and Works Accountants of India constituted under the Cost and Works Accountants Act, 1959 and such accounts officer shall be responsible for the proper maintenance of the books of account of the company, and shall ensure proper disclosure of all required information indicated in the prospectus or any other offer document, and also ensure compliance of the provisions of this Act relating to the accounts of the company.

(2) The chief accounts officer appointed under sub-section (1) shall also be responsible for the preparation of annual accounts of the company."

100. In section 217 of the principal Act,—

Amendment of section 217.

(a) in sub-section (1), after clause (e), the following clauses shall be inserted, namely:—

"(f) the measures taken for the protection of environment in such manner as may be prescribed;

(g) any other matter which may be prescribed."

(b) in sub-section (2A) and before the *Explanation*, the following provisos shall be inserted, namely:—

"Provided that the Central Government may exempt, a class or classes of companies whose employees are posted outside India, in connection with employment in that company, from including in the statement the remuneration of every such employee other than a relative of director of such company:

Provided further that such company shall send to the Registrar of Companies, the Central Government and such other authority, as may be prescribed, the details of the remuneration of all such employees in such form and in such manner as may be prescribed."

(c) after sub-section (2B), the following sub-section shall be inserted, namely:—

"(2C) The Board's report shall include information with respect to the following particulars in relation to each of its divisions and business segments of which the share is ten per cent. or more of the total turnover of the company, namely:—

(a) review of operations during the financial year of the company to which the balance sheet relates and on the date of the report;

(b) market conditions during the financial year of the company to which the balance sheet relates and on the date of the report; and

(c) future prospects."

101. In section 219 of the principal Act, in sub-section (1), after the proviso, the following provisos shall be inserted, namely:—

Amendment of section 219.

"Provided further that the Central Government may exempt a class or classes of companies from annexing or attaching to the balance sheet (including the profit and loss account), the auditor's report and every other document required to be attached under this section:

Provided also that every class of company or classes of companies referred to in the second proviso shall make available, the auditor's report and every other document required to be annexed or attached to the balance sheet, to every member of the company,

38 of 1949.

23 of 1959.

to every trustee for the holders of any debenture and to all persons other than such members or trustees, being a person so entitled to such report and document in such manner as may be prescribed.”.

Amendment
of section
220.

102. In section 220 of the principal Act, for sub-section (1), the following sub-sections shall be substituted, namely:—

“(1) After the balance sheet and the profit and loss account have been laid before a company at an annual general meeting, such number of copies of such balance sheet and profit and loss account, as may be prescribed, shall be filed with the Registrar, the Director (Research and Statistics) of the Department of Company Affairs of the Central Government and the Reserve Bank of India within thirty days from the date on which the balance sheet and the profit and loss account were so laid.

(1A) Where the annual general meeting of a company for any year has not been held, the documents referred to in sub-section (1), duly signed, shall be filed with the Registrar and the officer and the authorities specified in that sub-section within thirty days from the latest day on or before the annual general meeting ought to have been held in accordance with the provisions of this Act.”.

Amendment
of section
223.

103. In section 223 of the principal Act, —

(a) in sub-section (1), —

(i) for the word “February”, the word “May” shall be substituted;

(ii) for the word “August”, the word “November” shall be substituted;

(b) in sub-section (3), for the words “a sum of eight annas”, the words “such a sum as may be prescribed” shall be substituted.

Amendment
of section
224.

104. In section 224 of the principal Act, —

(a) in sub-section (1), for the proviso the following proviso shall be substituted, namely:—

“Provided that before any appointment or re-appointment of auditor or auditors is made by any company at any annual general meeting, a written certificate shall be obtained by the company from the auditor or auditors proposed to be so appointed to the effect that the appointment or re-appointment if made, shall be in accordance with the conditions as may be prescribed.”;

(b) in sub-section (5), in the opening portion, for the words “one month of the date of registration of the company”, the words “three months of the date of registration of the company” shall be substituted.

Amendment
of section
225.

105. In section 225 of the principal Act, in sub-section (1), for the words “a resolution”, the words “a special resolution” shall be substituted.

Amendment
of section
226.

106. In section 226 of the principal Act, —

(a) in sub-section (3), after clause (e), the following clause shall be inserted, namely:—

“(f) any person,—

(i) who has any direct financial interest in the company in which he is appointed or is proposed to be appointed as an auditor;

(ii) who receives any loan or guarantee from or on behalf of the company in which he is appointed or is proposed to be appointed as an auditor;

(iii) who has any business relationship (other than as an auditor) in the company in which he is appointed or is proposed to be appointed as an auditor;

(iv) has been in the employment in the company in which he is appointed or is proposed to be appointed as an auditor;

(v) whose relative is in the employment in the company in which he is appointed or is proposed to be appointed as an auditor;”;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) A person shall also not be qualified to be appointed as an auditor of a company if he receives or proposes to receive more than twenty-five per cent. of his total income in any financial year as his remuneration from such company:

Provided that nothing contained in this section shall apply –

(a) during the initial five financial years beginning from the date of commencement of the profession of any auditor; or

(b) to the auditor whose total income is less than fifteen lakh rupees in any financial year;”;

(c) in sub-section (4), after the words, brackets and figure “sub-section (3)”, the words, brackets, figure and letter “or sub-section (3A)” shall be substituted.

107. After section 226 of the principal Act, the following section shall be inserted, namely:—

Insertion of a new section 226A.

“226A. An auditor appointed under section 224 shall not provide following services or services relating to any of the following matters to a company (including its holding company or subsidiary company) in which he has been appointed or proposed to be appointed as an auditor under that section, namely:—

Prohibition to provide services other than audit.

(a) accounting and book-keeping services, relating to the accounting records or financial statements of the audit client;

(b) internal audit services;

(c) financial information systems design and implementation, including services relating to information technology system for preparing financial or management accounts and information flow of the company;

(d) actuarial services;

(e) broker or as intermediary referred to in section 12 of the Securities and Exchange Board of India Act, 1992 or investment adviser or investment banking services;

(f) outsourced financial services as may be specified by the Central Government by notification in the Official Gazette;

(g) management functions, including the provision of temporary staff to audit clients;

(h) any form of staff recruitment, and particularly hiring of senior management staff for the audit client;

(i) valuation services and fairness opinion; and

(j) any other service as may be prescribed.”.

108. In section 227 of the principal Act, —

(a) in sub-section (1A),—

(i) in clause (c), for the words and figures “company is not an investment company within the meaning of section 372”, the words “company whose principal business is the acquisition of shares, debentures or other securities” shall be substituted;

Amendment of section 227.

(ii) for clause (d), the following clause shall be substituted, namely:—

“(d) whether on the basis of information and explanations obtained by the auditor under sub-section (1), he has any comments to offer on loans and advances made by the company which have been shown as deposits;”;

(iii) in clause (f), for the word “shares”, the word “securities” shall be substituted;

(iv) after clause (f), the following clauses shall be inserted, namely:—

“(g) whether the bank account for unpaid dividend referred to in section 205A has been credited with the fund for full payment for unpaid dividend;

(h) whether adequate steps have been taken by the company to pay deposits (including interest thereon) which have become due for repayment to deposit holders along with reasons for non-payment of such deposits.”;

(b) in sub-section (3), —

(A) for clause (d), the following clause shall be substituted, namely:—

“(d) whether in his opinion, —

(i) accounting policies of the company are in conformity with the accounting standards;

(ii) there have been any deviation from the company's accounting policies, and if so, the quantum of financial implications such deviations have caused;

(iii) the accounting treatment in the balance sheet and the profit and loss account in respect of any item is inappropriate;”;

(B) after clause (g), the following clause shall be inserted, namely:—

“(h) whether the company has taken adequate steps to repay deposits due, along with interest or dividend declared.”;

(c) in sub-section (4), the following proviso shall be inserted, namely:—

“Provided that if auditors' report contains any reservation, qualification or adverse remark, such reservation, qualification or adverse remark shall be read out by the auditor himself or his nominee in the annual general meeting and a copy of auditors' report along with the reservation, qualification or adverse remark shall be forwarded, within thirty days from the date on which the annual general meeting is held, to the Registrar, the Securities and Exchange Board of India and the concerned stock exchanges.”.

Amendment
of section
228.

109. In section 228 of the principal Act, in sub-section (2), for the proviso, the following proviso shall be substituted, namely:—

“Provided that in the case of a banking company having a branch office outside India, the audit shall be carried out in the manner as may be prescribed.”.

Amendment
of section
232.

110. In section 232 of the principal Act, for the words and figures “sections 225 to 231”, the words, figures, brackets and letter “sections 225 to 231 (excluding section 226A)” shall be substituted.

111. For section 233 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 233.

“233. (1) If a default is made in complying with any of the provisions contained in section 226A, —

Penalty for non-compliance by auditor with sections 226A, 227 and 229.

(a) every officer of the company who is in default shall be punishable with fine of five hundred rupees for each day during which the default continues;

(b) every auditor of the company who is in default shall be punishable with fine equivalent to three times the total remuneration received by such auditor or fifty thousand rupees, whichever is more;

(c) every company which is in default shall be punishable with fine equivalent to twenty-five per cent. of the paid up capital and free reserves of such company or one crore rupees, whichever is less.

(2) If any auditor's report is made, or any document of the company is signed or authenticated, otherwise than in conformity with the requirements of sections 226A, 227 and 229, the auditor concerned, and the person, if any, other than the auditor who signs the report or signs or authenticates the document, shall, if the default is wilful, be punishable with fine which may extend to ten thousand rupees.”

112. In section 233A of the principal Act,—

Amendment of section 233A.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where the Central Government is of the opinion,—

(a) that the affairs of any company are not being managed in accordance with sound business principles or prudent commercial practices; or

(b) that any company is being managed in a manner likely to cause serious injury and damage to the interest of the trade, industry or business to which it pertains; or

(c) that the financial position of any company is such as to endanger its solvency; or

(d) that contravention of the provisions of this Act in relation to the maintenance of accounts of the company or in the conduct of audit have eroded the faith and confidence in the proper management of the company; or

(e) that the management of the company is being conducted in any manner prejudicial to the interests of holders of securities or development of securities market or creditors of the company or the public interest;

(f) the management of the company has indulged in insider trading or market manipulation,

the Central Government may, at any time, by order, direct that a special audit, cost audit or secretarial audit of the company's accounts as it may consider necessary, shall be conducted either by a chartered accountant or a cost accountant or a company secretary or a firm of such professionals, as the case may be, or by the company's auditor himself, for such period or periods, as may be, specified in the order.”

(b) sub-section (2) shall be omitted;

(c) in sub-section (5), for the words “punishable with fine which may extend to

five thousand rupees”, the words “punishable with imprisonment for a term which may extend to one year and with fine which may extend to five thousand rupees and also with a further fine which may extend to five hundred rupees for every day during which default continues” shall be substituted;

(d) in sub-section (6), the proviso shall be omitted;

(e) in sub-section (7), for the words “paid by the company”, the words “paid by the company, in such manner as may be prescribed, to the Central Government within fifteen days from the day of such determination” shall be substituted;

(f) after sub-section (7), the following sub-section shall be inserted, namely:—

“(8) The Central Government shall, on receipt of report of special auditor under sub-section (6), pay, out of the expenses received under sub-section (7), pay the remuneration to the special auditor.”.

Amendment
of section
233B.

113. In section 233B of the principal Act, in sub-section (2), for the words, brackets, figures and letter “sub-section (1B) of section 224 and with the previous approval of the Central Government”, the words, brackets, figures and letter “sub-section (1B) of section 224” shall be substituted.

Amendment
of section
234A.

114. In section 234A of the principal Act, —

(a) in sub-section (2), for clause (c), the following clause shall be substituted, namely:—

“(c) to seize such books and papers as he considers necessary after allowing to take copies of, or, extracts from, such books or papers to be taken at the cost of company;”;

(b) in sub-section (3),—

(i) for the words “thirtieth day”, the words “ninetieth day” shall be substituted.;

(ii) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that the company may obtain from the Registrar at its costs the attested copy of any of its papers or books seized.”.

Amendment
of section
240A.

115. In section 240A of the principal Act, in sub-section (2), for clause (c), the following clause shall be substituted, namely:—

“(c) to seize such books and papers as he considers necessary for the purposes of his investigation after allowing to take copies of, or extracts therefrom.”.

Insertion of
new section
248.

116. After section 247 of the principal Act, the following section shall be inserted, namely:—

Information
regarding
persons
having an
interest in
company or in
body
corporate.

“248. (1) Where it appears to the Central Government, or to the Tribunal in any proceedings before it, that there is good reason to investigate the ownership of any shares in or debentures of a company or of a body corporate and that it is unnecessary to appoint an inspector for the purpose, the Central Government or the Tribunal, as the case may be, may require any person whom it has reasonable cause to believe—

(a) to be, or to have been, interested in those shares or debentures;

(b) to act, or to have acted, in relation to those shares or debentures, as the legal adviser or agent of someone interested therein,

to give the Central Government or the Tribunal, as the case may be, any information which he has, or can reasonably be expected to obtain, as to the present and past interests in those shares or debentures, and the names and addresses of the persons interested and of any persons who act or have acted on their behalf in relation to the shares or debentures.

(2) For the purposes of sub-section (1), a person shall be deemed to have an interest in a share or debenture—

(a) if he has any right to acquire or dispose of the share or debenture or any interest therein or to vote in respect thereof;

(b) if his consent is necessary for the exercise of any of the rights of other persons interested therein; or

(c) if other persons interested therein can be required, or are accustomed, to exercise their rights in accordance with his directions or instructions.

(3) Any person—

(a) who fails to give any information required of him, under this section; or

(b) who, in giving any such information, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.”

117. In section 250 of the principal Act, in sub-section (9), for the words “term which may extend to six months,” the words “term which may extend to two years” shall be substituted.

Amendment of section 250.

118. For section 252 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 252.

‘252. (1) Every public company, having paid-up capital and free reserves of five crore rupees or more; or a turnover of fifty crore rupees, or more, shall have minimum seven directors out of which majority of directors shall be independent directors:

Minimum and Maximum number of Directors.

Provided that such public company shall have such number of women directors, as may be prescribed.

(2) Every public company, other than referred to in sub-section (1), shall have a minimum of three directors.

(3) No public company shall have more than fifteen directors:

(4) In case a public company referred to in sub-section (1) has more than seven directors, without prejudice to the provisions contained in sub-section (1), such public company shall have such number of woman directors and independent directors as may be prescribed:

Provided that the companies, having less than fifty shareholders and which do not have any debt or funding from the public or banks or public financial institutions, shall not be required to have minimum seven directors or independent directors:

Provided further that a public company having —

(a) a paid-up capital of five crore rupees or more;

(b) one thousand or more small shareholders,

may have a director elected by such small shareholders in the manner as may be prescribed:

Provided also that the companies, existing before the commencement of the Companies (Amendment) Act, 2003, shall have minimum number of directors, maximum number of directors, independent directors and woman directors, in accordance with the provisions of this section, within such period and in such manner, as may be prescribed:

Provided also that provisions contained in section 252, as it stood immediately before the commencement of the Companies (Amendment) Act, 2003, shall continue to apply to the companies existing before such commencement until the period and the manner has been prescribed under the third proviso.

(5) Every private company shall have at least two directors.

(6) The directors of a company collectively are referred to in this Act as the “Board of directors” as “Board”.

Explanation 1.—For the purposes of this proviso, “small shareholders” means the second shareholder holding shares of nominal value of twenty thousand rupees or less in a public company to which this section applies.

Explanation 2.—For the purposes of counting the number of independent directors, the woman directors who are also independent directors shall also be reckoned in the total number of independent directors.’.

Insertion of
new section
252A.
Independent
directors.

119. After section 252 of the principal Act, the following section shall be inserted, namely:—

“252A. (1) A person shall not be capable of being appointed an independent director of a company if —

(a) he is a whole-time director or a managing director of the company; or

(b) he has any transaction with the company (including its holding company or subsidiary company) or its chairman or managing director or whole-time director or secretary or manager or any officer who can be considered as an officer in default in connection with business or profession or in any other capacity; or

(c) he is relative of the chairman or managing director or whole-time director or secretary or manager or any officer who can be considered as an officer in default of the company; or

(d) he has held any post in the company; or

(e) he has been an auditor or internal auditor or consultant (including advocate or legal advisor) of the company during any of the three preceding financial years; or

(f) he is or has been a supplier or vendor or customer of the goods or services of the company; or

(g) he holds two per cent. or more of the securities of the company having voting rights; or

(h) he has been a director or an independent director in the Company for a consecutive period of nine years or more; or

(i) he is holder of any equity shares of the company in which he is an independent director during his tenure as such and six months after he ceases to be an independent director; or

(j) he is a nominee director or employee or executive director of any bank or financial institution or corporation which has offered financial assistance to the company; or

(k) he is nominated director in any other company which has nominated a director in the company in which he is an independent director.

(2) No person shall be appointed as an independent director unless he has taken a training, from such date as the Central Government may notify, from an institute notified by the Central Government, within a period of two years prior to his appointment as such:

Provided that an independent director may take the training, within eighteen months of his appointment, from an institute notified by the Central Government failing which he shall cease to be an independent director and be not eligible for appointment as an independent director in any company till such time he takes training but he may continue as a director in that company:

Provided further that an independent director, appointed before the commencement of the Companies (Amendment) Act, 2003, shall take training from such date as may be notified under the first proviso.”.

Amendment
of section
256.

120. In section 256 of the principal Act, in sub-section (1), the words and figures “held next after the date of the general meeting at which the first directors are appointed in accordance with section 255” shall be omitted.

121. In section 257 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment
of section
257.

“(1) A person who is not a retiring director shall, subject to the provisions of this Act, be eligible for appointment to the office of director at any general meeting, if he or some member intending to propose him has, the consent of one hundred shareholders or of the holders of one per cent. of the total voting power and has, not less than fourteen days before the meeting, left at the office of the company a notice in writing under his hand signifying his candidature for the office of director or the intention of such member to propose him as a candidate for that office, as the case may be, along with a deposit of ten thousand rupees which shall be forfeited if the votes cast are less than one per cent. of the total number of votes.

122. In section 259 of the principal Act, for the proviso, the following provisos shall be substituted, namely:—

Amendment
of section
259.

“Provided that where such permissible maximum is fifteen or less than fifteen, no approval of the Central Government shall be required if the increase in the number of its directors does not make the total number of its directors more than fifteen:

Provided further that the approval by the Central Government under this section for any increase in the number of directors beyond fifteen shall not have any effect after expiry of one hundred eighty days from the date of such approval.”

123. In section 260 of the principal Act, after the second proviso, the following proviso shall be inserted, namely:—

Amendment
of section
260.

“Provided also that no person who has, in an election, failed to get elected as a director, shall be appointed as an additional director till the next annual general meeting of the company.”

124. For section 266 of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section
for section
266.

“266. (1) A person shall not be capable of being appointed as a director of a company by the articles, and shall not be named as a director or proposed director of a company in a prospectus issued by or on behalf of the company or as proposed director of an intended company in a prospectus issued in relation to that intended company, unless, before the registration of the articles, or the publication of the prospectus, he has by himself or by his agent, authorised in writing, signed and filed with the Registrar, a consent in writing to act as such director.

Restrictions
on appoint-
ment or
advertisement
of director.

(2) This section shall not apply to—

(a) a company not having a share capital;

(b) a private company; or

(c) a prospectus issued by or on behalf of a company after the expiry of one year from the date on which the company was incorporated.”

125. In section 270 of the principal Act, after sub-section (4), the following proviso shall be inserted, namely:—

Amendment
of section
270.

“Provided that nothing contained in this section shall apply on or after the commencement of the Companies (Amendment) Act, 2003.”

126. In section 274 of the principal Act,—

Amendment
of section
274.

(a) in sub-section (1),—

(i) in clause (g), in sub-clause (B), after the words “debentures on due date,” the words “or pay interest thereon on due date” shall be inserted;

(ii) after clause (g), the following clauses shall be inserted, namely:—

“(h) he has been convicted for any default punishable with imprisonment under this Act;

(i) he has failed to acquire such percentage of shares in such class of companies as may be prescribed.”;

(b) in sub-section (2), after clause (b), the following clause shall be inserted, namely:—

“(c) the disqualification incurred by any company or person by virtue of clause (g) or clause (h) of sub-section (1) either generally or in relation to any company or companies specified in the notification.”.

Substitution of new sections for sections 275 and 276.

No person to be a director of more than fifteen companies.

127. For sections 275 and 276 of the principal Act, the following sections shall be substituted, namely:—

“275. No person shall, hold office at the same time as a director in more than fifteen companies:

Provided that where any such person also holds office as a managing director or whole-time director in any company, the limit specified in this sub-section shall be reduced to ten:

Provided further that the Central Government may, specify, by the notification in the Official Gazette, the percentage of shares which may be held by such director in a class or classes of companies wherein a person may be appointed as a director.

Choice to be made by director of more than fifteen companies.

276. (1) Any person holding office as director in more than fifteen companies or holding office as a managing or whole-time director in one or more companies and holding office as a director in more than ten companies, immediately before the commencement of the Companies (Amendment) Act, 2003, shall, within sixty days from such commencement,—

(a) choose not more than fifteen or as the case may be, ten of those companies, in which he wishes to continue to hold the office of director;

(b) resign his office as director in the other companies; and

(c) intimate the choice made by him under clause (a) to each of the companies in which he was holding the office of director before such commencement, to the Registrar having jurisdiction in respect of each such company.

(2) Any resignation made in pursuance of clause (b) of sub-section (1) shall become effective immediately on the despatch thereof to the company concerned.

(3) Where a person already holding the office of director in fifteen companies is appointed, after the commencement of the Companies (Amendment) Act, 2003, as a director of any other company, the appointment—

(a) shall not take effect unless such person has, within fifteen days thereof, effectively vacated his office as director in any of the companies in which he was already a director; and

(b) shall become void immediately on the expiry of the fifteen days if he has not, before such expiry, effectively vacated his office as director in any of the other companies aforesaid.”.

Amendment of section 279.

128. In section 279 of the principal Act,—

(a) for the words “fifteen companies”, the words “fifteen or ten companies, as the case may be,” shall be substituted;

(b) for the words “first twenty”, the words “first ten or fifteen, as the case may be,” shall be substituted.

129. After section 279 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section for section 280.

“280. (1) No person shall be eligible to hold office as a managing director, whole-time director or other director or manager of a company, if he has attained the age of seventy-five years.

Retiring age of directors.

(2) Where any managing director, whole-time director or other director or manager attains the age of seventy-five years, on the commencement of the Companies (Amendment) Act, 2003 or at any time thereafter, then, notwithstanding anything contained in sub-section (1), he shall continue to hold such office even after such commencement until the expiry of his term.

(3) Nothing in this section shall apply to a private company unless it is a subsidiary of a public company.”.

130. In section 283 of the principal Act, in sub-section (2A), for the words “punishable with fine”, the words “punishable with imprisonment for a term which may extend to three years and with fine” shall be substituted.

Amendment of section 283.

131. In section 284 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment of section 284.

“(2) Special notice shall be required of any resolution to remove a director under this section, or to appoint some other person in place of a director so removed at the meeting at which he is removed along with a deposit of ten thousand rupees:—

Provided that such deposit shall not be refunded unless ten per cent. or more of the total votes has been cast in favour of such resolution.”.

132. For section 285 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 285.

“285. (1) In the case of every company, a meeting of its Board shall be held in such a manner that not more than three months shall lapse between two consecutive meetings of the Board:

Board to meet at least once in every three calendar months.

Provided that the Central Government may, by notification in the Official Gazette, direct that the provisions of this section shall not apply in relation to any class of companies or shall apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in that notification.

(2) Any meeting of the Board of directors may be held by participation of the directors of the Board through teleconferencing or video conferencing and such meeting shall be valid if the minutes of such meeting has been approved and signed subsequently by all directors of the Board who participated in such meeting:

Provided that the Central Government may, by a notification in the Official Gazette, specify the powers which shall not be exercised in a meeting held through teleconferencing or video conferencing.”.

133. In section 286 of the principal Act, for sub-section (1), the following shall be substituted, namely:—

Amendment of section 286.

“(1) Notice of every meeting of the Board of a public company along with the agenda shall be given in writing to every director for the time being in India, and at his usual address in India to every other director not less than seven days before the date of the meeting:

Provided that nothing in this sub-section shall apply to an emergency meeting for which a majority of the directors have agreed to waive such requirement:

Provided further that in the case of companies having a paid-up capital and free reserves of ten crore rupees or more or having turnover of fifty crore rupees, such emergency meeting shall be valid if the majority of independent directors were present in such meeting.”.

Amendment
of section
289.

134. In section 289 of the principal Act, the following proviso shall be inserted, namely:—

“Provided that such resolution is ratified at a subsequent meeting of the Board or the committee thereof, as the case may be, and is made part of the minutes of such meeting.”.

Amendment
of section
292.

135. In section 292 of the principal Act,—

(a) in sub-section (1), —

(i) in clause (b), for the word “debenture”, the words “securities whether issued in India or outside” shall be substituted;

(ii) for clause (e), the following clauses shall be substituted, namely:—

“(e) the power to grant loans or give guarantee or provide security in respect of loans;

(f) the power to approve the balance sheet, the profit and loss account and the director’s report;

(g) the power to diversify the business of the company;

(h) the power to approve amalgamation, merger or re-construction;

(i) the power to takeover a company or acquire a controlling or substantial stake in another company;

(j) the power to make contribution to charitable or other funds.”.

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Every resolution delegating the power referred to in clause (d) of sub-section (1) shall specify the total amount upto which the funds may be invested, and the nature of the investments which may be made, by the delegate and such resolution shall be passed with the consent of all the directors present at the meeting:

Provided that the power to invest under clause (d) shall not exceed twenty per cent. of the paid-up capital and free reserves of the company in a financial year.”;

(c) in sub-section (4), after the words “individual cases”, the words “and such resolution shall be passed with the consent of all the directors present at the meeting” shall be inserted;

(d) after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) Every resolution delegating powers referred to in clause (j) of sub-section (1) shall specify the total amount up to which contributions may be made by the delegate, the purpose for which the contributions may be made and the maximum amount of contribution which may be made for each such purpose in individual cases.”.

Amendment
of section
292A.

136. In section 292A of the principal Act, for sub-section (1), the following shall be substituted, namely:—

“(1) Every public company having paid-up capital of not less than five crore of rupees shall constitute a committee of the Board known as Audit Committee which shall consist of not less than two independent directors and not more than such number of maximum independent directors, as the Central Government, may prescribe:

Provided that every Company which has constituted the Audit Committee before the commencement of the Companies (Amendment) Act, 2003, shall reconstitute within one year from such commencement, the Audit Committee consisting of independent directors in accordance with the provisions of this Act.

(1A) The members of the Audit Committee shall exercise such powers and perform such functions as may be prescribed.”.

137. In section 293 of the principal Act,—

Amendment
of section
293.

(a) in sub-section (1), after clause (a), the following provisos shall be inserted, namely:—

“Provided that the sale, lease or otherwise disposal of the undertaking of a company in a financial year shall not exceed twenty per cent. of the total assets of the undertaking or ten per cent. of the total assets of the company, whichever is higher, in that financial year:

Provided further that nothing in this sub-section shall apply to the creation of a charge or mortgage of the whole or substantially the whole of any undertaking in favour of a financial institution or a scheduled bank for obtaining any financial assistance.”;

(b) after *Explanation III*, the following *Explanation* shall be inserted, namely:—

‘*Explanation IV*.— The expression “undertaking” in clause (a) of this sub-section (other than the proviso thereto), means an undertaking in which the investment of the company exceeds five per cent. of its net worth.’.

138. For section 294 of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section
for section
294.

‘294. (1) No company shall appoint a sole selling agent for any area in India except with the previous consent of the company accorded by a special resolution in a general meeting:

Appointment
of sole selling
agent.

Provided that where the sole selling agent has a substantial interest in the company, the particulars relating to such sole selling agent shall be disclosed as a separate item in the Board’s report for every financial year in such form as may be prescribed.

(2) No company shall appoint a sole selling agent for any area outside India except with the previous consent of the Board and the particulars relating to such sole selling agent shall be disclosed as a separate item in the Board’s Report for every financial year in such form as may be prescribed.

(3) Without prejudice to the provisions contained in sub-section (2), where the sole selling agent has a substantial interest in the company, such appointment shall require the previous consent of the company accorded by special resolution in a general meeting and also prior approval of all the financial institutions which have given term loan to the company.

(4) Where the Central Government is of the opinion that the demand for goods of any category, to be specified by that Government, is substantially in excess of the production of supply of such goods and that the services of sole selling agents, will not be necessary to create a market for such goods, the Central Government may, by notification in the Official Gazette, declare that sole selling agents shall not be appointed by a company for the sale of such goods for such period as may be specified in the declaration.

(5) Where there is any change in the composition or status of any sole selling agent appointed under sub-section (1) or in the interest of directors or other important

terms of appointment, such sole selling agent cannot be continued as such from the date of such change unless the same procedure for the appointment of the sole selling agent in India or as the case may be, outside India, is followed for such continuance by the company.

(6) (a) Where a company has a sole selling agent (by whatever name called) for an area and it appears to the Central Government that for the purpose of determining whether or not such terms and conditions are prejudicial to the interests of the company or that the conditions specified for his appointment under sub-section (1) have not been followed; it is necessary so to do, it may require the company to furnish to it such information regarding the terms and conditions of the appointment of the sole selling agent as it considers necessary.

(b) If the company refuses or neglects to furnish any such information, the Central Government may appoint a suitable person to investigate and report on the terms and conditions of appointment of the sole selling agent.

(c) If, after perusal of the information furnished by the company or, as the case may be, the report submitted by the person appointed under clause (b), the Central Government is of the opinion that the terms and conditions of appointment of the sole selling agent are prejudicial to the interests of the company or that the conditions specified for his appointment under sub-section (1) have not been followed, the Central Government may, by order, in the Official Gazette, make such variations in those terms and conditions as would in its opinion make them no longer prejudicial to the interests of the company.

(d) As from such date as may be specified by the Central Government in the order aforesaid, the appointment of the sole selling agent shall be regulated by the terms and conditions as varied by the Central Government.

(7) (a) Where a company has more selling agents than one (by whatever name called) in any area or areas and it appears to the Central Government that for the purpose of determining whether any of those selling agents should be declared to be the sole selling agent for such area or any of such areas; it is necessary so to do, it may require the company to furnish to it such information regarding the terms and conditions of appointment of all the selling agents as it considers necessary.

(b) If the company refuses or neglects to furnish any such information, the Central Government may appoint a suitable person to investigate and report on the terms and conditions of appointment of all the selling agents.

(c) If, after perusal of the information furnished by the company or, as the case may be, the report submitted by the person appointed under clause (b), the Central Government is of the opinion that having regard to the terms and conditions of appointment of any of the selling agents and to any other relevant factors, that selling agent is to all intents and purposes the sole selling agent for such area, although there may be one or more other selling agents of the company operating in that area, the Central Government may, by order, in the Official Gazette, declare that selling agent to be the sole selling agent of the company for that area with effect from such date as may be specified in the order and may make suitable variations in such of the terms and conditions of appointment of that selling agent as are in the opinion of the Central Government prejudicial to the interests of the company.

(d) As from the date specified in clause (c), the appointment of the selling agent declared to be the sole selling agent shall be regulated by the terms and conditions as varied by the Central Government.

(8) The compensation which may be paid by a company to its sole selling agent for loss of office shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term, or for three years whichever is

shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which his office ceased or was terminated, or where he held his office for a lesser period than three years, during such period.

(9) A company shall not pay or be liable to pay to its sole selling agent any compensation for the loss of his office in the following cases,—

(a) where the sole selling agent resigns his office in view of the reconstruction of the company or of its amalgamation with any other body corporate or bodies corporate and is appointed as the sole selling agent of the reconstructed company or of the body corporate resulting from the amalgamation;

(b) where the sole selling agent resigns his office, otherwise than on the reconstruction of the company or its amalgamation as aforesaid;

(c) where the sole selling agent has been guilty of fraud or breach of trust in relation to, or of gross negligence in, the conduct of his duty as the sole selling agent;

(d) where the sole selling agent has instigated, or has taken part directly or indirectly in bringing about, the termination of the sole selling agency.

(10) It shall be the duty of the company,—

(a) to produce to the person appointed under clause (b) of sub-section (6) or clause (b) of sub-section (7), all books and papers of, or relating to, the company which are in its custody or power; and

(b) otherwise to give to that person all assistance in connection with the investigation which the company is reasonably able to give.

(11) If a company makes a default in complying with the provisions of this section, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees and with a further fine of not less than five hundred rupees for every day after the first during which such refusal or neglect continues.

(12) The provisions of this section shall, so far as may be, apply to the sole selling, or the sole purchasing or buying agents of a company.

Explanation— In this section,—

(a) “appointment” includes re-appointment;

(b) “substantial interest”,—

(i) in relation to an individual means the beneficial interest held by such individual or any of his relatives, whether singly or taken together, in the shares of the company, the aggregate amount paid-up which exceeds five lakh rupees or five per cent. of the paid-up share capital of the company, whichever is less;

(ii) in relation to a firm, means the beneficial interest held by one or more partners of the firm or any relative of such partner, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakh rupees or five per cent. of the paid-up share capital of the company whichever is less;

(iii) in relation to a body corporate, means the beneficial interest held by such body corporate or one or more of its directors or any relative of such director, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent. of the paid-up share capital of the company, whichever is less.

Omission of
section 294A.

139. Section 294A of the principal Act shall be omitted.

Omission of
section
294AA.

140. Section 294AA of the principal Act shall be omitted.

Amendment
of section
295.

141. In section 295 of the principal Act,—

(a) for sub-sections (1), (2) and (3), the following sub-sections shall be substituted, namely:—

“(1) No company (hereafter in this section referred to as “the lending company”) shall, except with the previous consent of the company accorded by a special resolution in a general meeting, directly or indirectly, make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by—

(a) the managing director or any director of the lending company, or of a company which is its holding company, or any partner or relative of any such director;

(b) any firm in which any such director or relative is a partner; and

(c) any private company of which any such director is a director or member.

Provided that no loan shall be given to managing director or any director except for the purposes of meeting expenses on medical treatment, purchase or construction of residential house for the residence of such director or education of his children and the amount of loan given to managing director or any director in any financial year shall not exceed five times the amount of remuneration to which he is entitled in that financial year and such loan shall be subject to such conditions as may be prescribed:

Provided further that where a loan given to a managing director or any director for any of the grounds under the first proviso is outstanding, no further loan for such ground specified under that proviso, shall be given:

Provided also that in case a loan is proposed to be given to a relative of any director or a person having more than three per cent. of the equity of the company (either directly or through spouse, dependent or children), or to a company in which a director or a person having more than three per cent. of the equity of the company (either directly or through spouse or dependent children) has controlling interest by way of voting power being more than twentyfive per cent. individually or jointly, by a resolution of the Board passed by all the directors present, and with the prior approval of all financial institutions which have given term loan to the company.

(2) No company shall make any loan to, or given any guarantee or provide any security in connection with a loan made by any other person to, or to any other person by, any director of the company who is not a managing director or any director.

(3) Where any loan made, guarantee given or security provided by a lending company and outstanding at the commencement of this Act could not have been made, given or provided, without the previous consent of the company accorded by a special resolution, if this section had been in force, at the time when the loan was made, guarantee was given or security provided, the lending company shall, within six months from such commencement or such further time not exceeding six months as may be allowed by the Registrar on application, either obtain such consent to the transaction, or enforce the repayment of the loan made, or in connection with which the guarantee was given or the security was provided, notwithstanding any agreement to the contrary.’;

(b) in sub-section (4),—

(i) for the words, brackets and figures “sub-section (1) or sub-section (3)”, the words, brackets and figures “sub-section (1) or sub-section (2) or sub-section (3)”, shall be substituted;

(ii) after the words “six months”, the words “or with both” shall be inserted;

(c) in sub-section (5), for the words, brackets and figures “sub-section (1) or (3)”, the words, brackets and figures “sub-section (1) or sub-section (2) or sub-section (3)” shall be substituted;

(d) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) The provisions of this section shall not apply to a banking company or a private company unless it is subsidiary of a public company.”.

142. In section 297 of the principal Act,—

(a) in sub-section (1), after clause (a), the following clause shall be inserted, namely:—

Amendment
of section
297.

“(aa) for the sale, purchase or lease of any property; or”;

(b) in sub-section (2), in sub-clause (b), in the proviso for the words “five thousand rupees”, the words “such amount as may be prescribed” shall be substituted;

(c) in sub-section (3), for the words “five thousand rupees”, the words “such amount as may be prescribed” shall be substituted.

143. In section 299 of the principal Act,—

(a) in sub-section (6), after the words “share capital in the other company”, the words “unless any such director is concerned or interested in the other company in any other manner” shall be inserted;

Amendment
of section
299.

(b) after sub-section (6), the following sub-section shall be inserted, namely:—

“(7) For the purposes of this section, a director of a subsidiary company who is an employee of the holding company and who is nominated by the holding company on the Board of the subsidiary company, shall not be deemed to be concerned or interested in any contract or arrangement between the holding company and the subsidiary company.”.

144. In section 300 of the principal Act, in sub-section (4), the word “knowingly” shall be omitted.

Amendment
of section
300.

145. In section 301 of the principal Act, in sub-section (3A), in clause (a), for the words “one thousand rupees”, the words “such amount as may be prescribed” shall be substituted.

Amendment
of section
301.

146. In section 303 of the principal Act,—

(a) in sub-section (1),—

Amendment
of section
303.

(i) in the opening portion, for the words “directors, managing director, manager and secretary”, the words “director, managing director, chief accounts officer, manager and secretary” shall be substituted;

(ii) clauses (b) and (c) shall be omitted;

(b) in sub-section (2), for the words “directors, managing directors, managers or secretaries”, the words “directors, managing directors, chief accounts officers, managers or secretaries” shall be substituted;

(c) in sub-section (3), for the words "five hundred rupees", the words "five thousand rupees" shall be substituted.

Amendment
of section
304.

147. In section 304 of the principal Act, in sub-section (1), for the words "one rupee", the words "such fee as may be prescribed" shall be substituted.

Amendment
of section
305.

148. In section 305 of the principal Act, in sub-section (1), for the words "director, managing director, manager or secretary" at both the places where they occur, the words "director, managing director, whole-time director, chief accounts officer, manager or secretary" shall be substituted.

Amendment
of section
309.

149. In section 309 of the principal Act,—

(a) in sub-section (1), proviso shall be omitted;

(b) sub-section (2) shall be omitted;

(c) in sub-section (4), for the words "the approval of the Central Government" at both the places where they occur, the words "the prior approval of the Central Government" shall be substituted;

(d) after sub-section (5A), the following sub-section shall be inserted, namely:—

"(5AA) Where remuneration or commission has been paid to any director, manager or employee on the basis of incorrect accounts (regardless of subsequent revision made) or if any director, manager or employee has made illegal or unlawful gains on the basis of such accounts, then, such payments or unlawful gains made shall be recovered from the director, manager or employee, or from his assets, or from the assets of his spouse, or dependent children if such assets were acquired after the director, manager or employee assumed his position as such.";

(e) in sub-section (7), for the words "five years", at both the places where they occur, the words "three years" shall be substituted;

(f) sub-section (8) shall be omitted.

Amendment
of section
313.

150. In section 313 of the principal Act,—

(a) in sub-section (1), for the words "the State in which meetings of the Board are ordinarily held", the word "India" shall be substituted;

(b) in sub-section (2), for the words "the State in which meetings of the Board are ordinarily held" the word "India" shall be substituted;

(c) in sub-section (3), for the words "the State aforesaid", the word "India" shall be substituted.

Amendment
of section
314.

151. In section 314 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Except with the consent of the company accorded by a special resolution,—

(a) no director of a company shall hold any office or place of profit, and

(b) no partner or relative of a director or manager, no firm in which, a director, manager or a relative of a manager, director, is a partner, no private company of which a director, a manager is a director or member, and no director or manager of such a private company, shall hold any office or place of profit carrying a total monthly remuneration of such sum as may be prescribed, except that of managing director or manager, banker or trustee for the holders of debentures of the company,—

(i) under the company; or

(ii) under any subsidiary of the company,

unless the remuneration received from such subsidiary in respect of such office or place of profit is paid over to the company:

Provided that it shall be sufficient if the special resolution according to the consent of the company is passed at a general meeting of the company held for the first time after the holding of such office or place of profit:

Provided further that the appointment of a relative of a person holding more than two per cent. of the equity of the company or the relative of any director of the company, shall require the approval of the Central Government if the remuneration exceeds such sums or such percentage of profits or turnover as may be prescribed.

Explanation.—For the purposes of this sub-section, a special resolution according consent shall be necessary for every appointment in the first instance to an office or place of profit and to every subsequent appointment to such office or place of profit on a higher remuneration not covered by the special resolution, except where an appointment on a time scale has already been approved by the special resolution”;

(b) sub-section (1B) shall be omitted;

(c) sub-sections (2A), (2B), (2C) and (2D) shall be omitted;

(d) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) This section shall not apply to a private company unless it is a subsidiary of public company.”.

152. For section 316 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 316.

“316. (1) No public company shall appoint or employ any person as managing director, whole-time director or the manager of the company except as provided in sub-section (2).

Restrictions on appointment of managing director and whole-time director.

(2) A public company may appoint or employ a person as its managing director or whole-time director, if he is the managing director, whole-time director or manager of one, and of not more than one, other company:

Provided that such appointment or re-appointment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India:

Provided further that the Central Government may allow appointment of a managing director in more than two companies.”.

153. For section 317 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 317.

“317. (1) No company shall, appoint or employ any individual as its managing director or whole-time director for a term exceeding five years at a time.

Managing director or whole-time director not to be appointed for more than five years at a time.

(2) Nothing contained in sub-section (1) shall be deemed to prohibit the re-appointment, re-employment, or the extension of the terms of office, of any person by further periods not exceeding five years on each occasion:

Provided that any such re-appointment, re-employment or extension shall not be sanctioned earlier than two years from the date on which it is to come into force.

(3) This section shall not apply to a private company unless it is a subsidiary of a public company.”.

Amendment
of section
349.

154. In section 349 of the principal Act, after sub-section (5), the following sub-section shall be inserted, namely:—

“(6) Notwithstanding anything contained in this section, the Central Government may prescribe different methods for determining profits for a class or classes of companies.”.

Amendment
of section
372A.

155. In section 372A of the principal Act,—

(a) after sub-section (4), the following sub-section shall be inserted, namely:—

“(4A) The Central Government may prescribe, for a class or classes of companies registered as stock broker or any other intermediary under section 12 of the Securities and Exchange Board of India Act, 1992, the limits up to which such companies may receive inter corporate loans or deposits and the extent to which any company may make loan or inter corporate deposits or inter corporate investments.”; 15 of 1992.

(b) in sub-section (9), for the words “two years or with fine”, the words “two years and with fine” shall be substituted;

(c) after sub-section (9), the following sub-section shall be inserted, namely:—

“(9A) Without prejudice to the provisions contained in this Act, every company shall make investment only through one investment company.”.

Explanation.— For the purposes of this section “investment company” means a company whose principal business is the acquisition of shares, debenture or other securities.’.

Substitution of
new section
for section
383A.

Certain
companies to
have a
company
secretary.

156. For section 383A of the principal Act, the following section shall be substituted, namely,—

“383A. (1) Every company having such paid-up share capital, as may be prescribed, shall employ a whole time secretary, who shall be a company secretary within the meaning of the Company Secretaries Act, 1980. 56 of 1980.

(2) A company secretary in whole-time employment shall, *inter alia*, perform the following functions, namely:—

(a) to convene Board and general meetings as per the directions of the chairman of the Board or any director as provided in the articles of association or as directed by the Tribunal;

(b) to maintain the record of the minutes of the meetings of the Board or shareholders and to ensure that the minutes book is duly dated and signed by the chairman of the meeting;

(c) to issue certificates relating to securities and attend to applications for transfers or splitting of scrips or issue of duplicate shares;

(d) to keep in his custody the company seal and all deeds and documents relating to property and other documents vesting in the company any valuable rights;

(e) to obtain approvals from the Board, general meetings, the Government and such other authorities as required under the provisions of this Act;

(f) to attend to any other duty he may be assigned by the Board or any director or general body of shareholders.

(3) For the removal of doubts, it is hereby declared that no managing director or whole-time director or manager shall, by virtue of provisions of sub-section (2), be deemed to be free of any liability under any other provisions of this Act.

(4) Every company having such paid up share capital, as may be prescribed, shall attach with the Board's Report referred to in section 217, a certificate from a Secretary in whole-time practice in such form and subject to such conditions, as may be prescribed, as to whether the company has complied with all the provisions of this Act or not:

Provided that a company, which is not required to employ a company secretary but having employed the company secretary, may file a certificate from him.

(5) If a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues."

157. After section 383A of the principal Act, the following sections shall be inserted, namely:—

Insertion of
new sections
383B and
383C.

'383B. (1) Where the Central Government is of the opinion that the affairs of any company are not being conducted in accordance with the provisions of this Act, the Central Government may, at any time, by order direct that the secretarial compliance audit of the company for such period or periods, as may be specified in the order, shall be conducted and may, by order, appoint a company secretary as defined in this Act to conduct such audit.

Power of
Central
Government
to direct
secretarial
audit in
certain cases.

(2) A company secretary appointed under sub-section (1) shall have the same powers and duties in relation to the secretarial compliance audit as a company secretary of a company has under section 383A:

Provided that the company secretary shall, submit the report of the secretarial compliance audit to the Central Government.

(3) The company secretary appointed under sub-section (1), shall report on all the matters specified in the order and shall also include a statement on any other matter which may be referred to him by the Central Government.

(4) The Central Government may, by order, direct any person specified in the order to furnish to the company secretary, within such time as may be specified therein, such information or additional information as may be required by the company secretary in connection with secretarial compliance audit; and on failure to comply with such order, such person shall be punishable with fine which may extend to five thousand rupees.

(5) On receipt of the report of secretarial compliance audit, the Central Government may take such action on the report as it considers necessary in accordance with the provisions of this Act or any other law for the time being in force.

(6) The expenses of, and incidental to, secretarial compliance audit (including the remuneration of the company secretary) shall be determined by the Central Government (whose determination shall be final) and paid by the company and in case of default, such payment shall be recoverable from the company as an arrear of land revenue.

Explanation.— For the purposes of this section "secretarial compliance audit" means verification and audit of compliance requirements under various provisions of this Act and identification of non compliances having a bearing on the conduct of affairs of the company.

383C. All documents, returns, forms required to be filed with the Registrar or any statutory authority shall be pre-certified by a company secretary in whole-time practice in such form and manner, as may be prescribed, by the Central Government.

Pre-
certification
by company
secretary.

Explanation.—For the purposes of this section, "certification by a company secretary in whole-time practice" means and includes a pre-certification of any of the

documents required to be filed with the Registrar or any statutory authority under this Act and all certificates issued by the company secretary in whole-time practice in evidence of compliance with the provisions of this Act.’.

Amendment
of section
386.

158. In section 386 of the principal Act,—

(a) in sub-section (1), for the words “either the manager or the managing director”, the words “manager or managing director or whole-time director” shall be substituted;

(b) in sub-section (2), for the words “manager or managing director”, the words “manager or managing director or whole-time director” shall be substituted.

Amendment
of section
388.

159. In section 388 of the principal Act, the words and figures “and those of section 312 shall apply in relation to the manager of a company, as they apply to a director thereof” shall be omitted.

Amendment
of section
388B.

160. In section 388B of the principal Act, in sub-section (2), the words “or such officer thereof as it may appoint in this behalf” shall be omitted.

Amendment
of section
388C.

161. In section 388C of the principal Act, in sub-section (1), after clause (b), the following clause shall be inserted, namely:—

“(c) grant any other relief which the Tribunal may consider just and appropriate so to do.”.

Amendment
of section
390.

162. In section 390 of the principal Act, in clause (b), for the words “both those methods; and”, the words, brackets, letters and figures “both those methods or by adopting any of the method or reduction of the share capital referred to in clauses (a), (b) and (d) of section 94;” and shall be substituted.

Amendment
of section
391.

163. In section 391 of the principal Act, —

(a) after sub-section (1), the following provisos shall be inserted, namely:—

“Provided that the Tribunal may dispense with the meeting of creditors of any class or members or any class of them or all the creditors or all the creditors of any class or all the members holding not less than one per cent. of the voting power or members of any class holding one per cent. of the total voting power, as the case may be, by an affidavit, confirm their consent to the compromise or arrangement:

Provided further that the Tribunal may, at its discretion, waive the requirement of notices to be issued to the creditors or any class of them for such meeting so long as specific notices are sent to all the creditors and a general notice is issued by a publication in one English and one vernacular news paper, circulating at the place where the company’s registered office is located”;

(b) for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) Every copy of the memorandum of the company, issued after the certified copy of the order has been filed as aforesaid or in a case of a company not having the memorandum, every copy so issued of the instrument constituting or defining the constitution of the company, shall disclose brief particulars of the order made by the Tribunal and contained in statement to the effect that full text of the order would be available to every member or creditor requiring the same.”;

(c) in sub-section (5), for the words “one hundred rupees”, the words “one thousand rupees” shall be substituted; .

(d) after sub-section (6), the following sub-section shall be inserted, namely:—

“(7) Notwithstanding anything contained in this section, the compromise or arrangement under this section shall not include buy back of securities other than under section 77A.”.

164. After section 391 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 391A.

“391A. (1) The Tribunal shall, while exercising the powers conferred by this Chapter, if it is considered necessary, to obtain expert opinion on any matter, for the determination of any question arising under this Chapter, issue commissions consisting of such experts in the field of law, accountancy, economics, management or other subjects and refer that question to that commission in the prescribed manner to give its expert opinion on the matter.

Power of Tribunal to issue Commissions for obtaining expert opinion.

(2) The Tribunal shall, while determining any question arising under this Chapter consider the opinion of the commission appointed under sub-section (1).”

165. In section 393 of the principal Act, in sub-section (1), in clause (a), after the words “shall be sent also”, the words “a scheme of compromise or arrangement and” shall be inserted.

Amendment of section 393.

166. In section 394 of the principal Act, in sub-section (1),—

Amendment of section 394.

(a) in the opening portion, after the words “between a company”, the words “whether or not such a company is scheduled undertaking within the meaning of the Industries (Development and Regulation) Act, 1951” shall be inserted;

(b) in clause (ii), for the words “other like interests”, the words “other like interests or any other consideration” shall be substituted;

(c) in sub-section (3), for the words, “five hundred rupees”, the words “one thousand rupees” shall be substituted.

167. After section 395 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 395A.

“395A. (1) In the event of an acquirer or person acting in concert with such acquirer becoming registered holders of ninety-five per cent. or more of the issued equity share capital of a company (including any hybrids or derivatives or shares carrying different voting rights) or, in the event of any person or group of persons becoming ninety-five per cent. majority or such percentage of shares or holding ninety-five per cent. of the issued equity share capital of a company by virtue of an amalgamation, share exchange conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company in which ninety-five per cent. or more of the issued equity share capital is held of their intention to buy the remaining equity shares of the company.

Purchase of minority shareholding.

(2) The acquirer, person or group of persons holding majority in accordance with sub-section (1) may make an offer to the minority shareholders of equity shares of the company for buying the equity shares held by such shareholders at a price determined in accordance with the rules made by the Central Government.

(3) Without prejudice to the foregoing provisions of this section, the minority shareholders of the company may also require the majority shareholders to purchase the minority equity shareholding of the company at the price determined in accordance with the rules made by the Central Government.

(4) The right of requiring a purchase out either by the majority or by the minority constituted in accordance with sub-section (1), in accordance with the provisions of sub-sections (2) and (3) shall apply to all companies.

(5) In the event of a purchase under this section, whether wholly or partially, the company shall be constituted as a transfer agent for receiving and paying the price to the shareholder delivering the shares, and as agent for taking delivery of the shares and delivering such shares to the majority, as the case may be.

(6) In the absence of a physical delivery of shares, in the event of a purchase at the instance of the majority, the share certificates may be cancelled and the company shall be authorised to issue duplicate share certificates and completing the transfer in accordance with law and make payment of the price out of any deposit by the majority in advance to the minority by despatch of such payment under registered post acknowledgement due to their last known address.

(7) In the event of a majority shareholders requiring a full purchase and making payment of price by deposit with the company, for any shareholder or shareholders who have died or ceased to exist, or whose heirs, successors, administrators or assignees have not been brought on record by transmission, the right of such shareholder to make an offer for sale to minority equity shareholding, shall continue and be available for a period of three years from the date of majority acquisition or majority shareholding.”.

Amendment
of section
402.

168. In section 402 of the principal Act, after clause (f), the following clause shall be inserted, namely:—

“(ff) the appointment of a receiver;”.

Amendment
of section
408.

169. In section 408 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:—

“(4) A person appointed under sub-section (1) to hold office as a director or a person directed under sub-section (2) to hold office as an additional director, shall not be liable to determination by retirement of directors by rotation; but such director or additional director may be removed by the Central Government from his office at any time and another person may be appointed by that Government in his place to hold office as a director or, as the case may be, an additional director.”.

Substitution of
new section for
section 560.

170. For section 560 of the principal Act, the following section shall be substituted, namely:—

Power to
strike defunct
company off
register.

“560. Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, in accordance with the provisions of this Act, the name of the company may be struck off the register of the companies as per such procedure as may be prescribed.”.

Insertion of
new section
609A.

171. After section 609 of the principal Act, the following section shall be inserted, namely:—

Power of
Central
Government
to appoint
Director
General of
Inspection and
Investigation.

‘609A. (1) The Central Government may, by notification in the Official Gazette, appoint a Director-General of Inspection and Investigation (hereinafter referred to as “Director General”) and as many Additional, Joint, Deputy or Assistant Director General of Inspection and Investigation, as it may think necessary to assist the Director General for exercising powers of inspection and investigation as contained in this Act.

(2) The Director General shall be responsible for the conduct of all inspections and investigations under this Act and shall exercise such supervision and control over all the inspections or investigations made under this Act and to perform such functions and discharge such duties as may be given to him by the Central Government.

(3) The Director General shall perform his functions under the general supervision of the Central Government and the other officers appointed under sub-section (1) shall work under the direction of the Director General and shall be responsible to him.

(4) The Central Government may provide for such other officers and other employees to assist the Director General to carry out his functions under this Act.’

172. For section 610 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 610.

‘610. (1) Save as otherwise provided elsewhere in this Act, any person may—

Inspection, production and evidence of documents kept by Registrar and admissibility of micro-films, etc., as evidence.

(a) inspect any documents kept by the Registrar in accordance with the rules to be made from time to time being documents filed or registered by him in pursuance of this Act, or make a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection of such fees as may be prescribed;

(b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment in advance of such fees as may be prescribed.

(2) No process for compelling the production of any document kept by the Registrar shall issue from any Court or the Tribunal except with the leave of the Court or the Tribunal and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the Court or the Tribunal.

(3) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies under this Act, certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.

(4) Notwithstanding anything contained in any other law for the time being in force,—

(a) a micro-film of a document or the reproduction of the image or images embodied in such micro-film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as “computer printout”), if the conditions mentioned in sub-section (5) are satisfied,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence should be admissible.

(5) The conditions referred to in sub-section (4) in respect of a computer printout shall be the following, namely:—

(a) the information contained in the statement reproduce or is derived from returns and document filed by the company on paper or on computer network, floppy, diskette, magnetic cartridge tape, CD-rom or any other computer readable media;

(b) while receiving returns or documents on computer media, necessary checks by scanning the documents filed on computer media will be carried out and media will be duly authenticated by the Registrar.

(6) The Registrar shall also take due care to preserve the computer media by duplicating, transferring, mastering or storage without loss of data.’

Insertion of
new section
615A.

Power to call
for informa-
tion.

173. After section 615 of the principal Act, the following section shall be inserted, namely:—

“615A. The Central Government may call any information and records from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which are under investigation or inquiry by the Central Government.”.

Insertion of
new sections
629B and
629C.

174. After section 629A of the principal Act, the following sections shall be inserted, namely:—

“629B. If a company fails to credit to the Investors Education and Protection Fund established under section 205C, the amounts specified in clauses (a) to (g) of sub-section (2) of that section,—

(a) the company and every officer of the company which is in default shall be punishable with fine which shall not be less than the amount not deposited; and

(b) every officer of the company who is in default shall also be punishable with imprisonment for a period of not less than three months and which may extend to two years.’.

Failure to
credit the
amount to the
Investors’
Education and
Protection
Fund
established
under section
205C.

Attachment
of bank
account.

“629C. The Central Government may, by an order, for reasons to be recorded in writing in the interest of investors or security market may attach after passing of an order on an application made for approval, by the Judicial Magistrate of first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder, shall be allowed to be attached.”.

STATEMENT OF OBJECTS AND REASONS

The Companies Act, 1956 has been in force for more than four decades. During this period the said Act has been amended several times to keep pace with the changing economy and circumstances. In the dynamic world of corporate affairs, there is a need to continuously liberalise, deregulate and simplify the laws governing the corporate sector. It is also necessary to provide adequate protection to investors, shareholders, creditors, employees and other concerned persons to ensure that corporate wrongs are quickly and effectively rectified and those responsible are punished, thereby bringing about good corporate governance.

2. Based on the recommendations of a working group comprising the experts having knowledge of law, economics and company affairs, a comprehensive Bill, namely the Companies Bill, 1997, was introduced in Rajya Sabha in 1997, to consolidate and amend the law relating to companies and certain other associations. The main objective of the said Bill was to facilitate a healthy growth of the Indian corporate sector under a liberalised, fast changing and highly competitive environment. Subsequently, some of the provisions contained in the Companies Bill, 1997, were enacted by the Companies (Amendment) Act, 1999 and the Companies (Amendment) Act, 2000.

3. Since certain provisions of the Companies Bill, 1997, have already been enacted and become part of the Companies Act, 1956, a new comprehensive legislation to consolidate and repeal the Companies Act, 1956, is neither feasible nor required. Several provisions of the Companies Bill, 1997, which have not been enacted so far are, however, relevant even today, and can be enacted with modifications. Therefore, the present Bill, *inter alia*, incorporates certain provisions of the Companies Bill, 1997 with or without modifications.

4. Further, based on the recommendations made by the Committee on Corporate Audit and Governance (the Naresh Chandra Committee), a number of provisions are proposed in the present Bill to facilitate good corporate governance which, *inter alia*, are as under:—

- (a) prohibition of business, financial, employment or personal relationships between the auditor and the company of which a person is an auditor;
- (b) prohibition of carrying out certain non-audit services;
- (c) provision for the appointment of independent directors and women directors in the Board of directors of the company;
- (d) provision for composition and independence of audit committees;
- (e) conferring power upon the Central Government to attach bank accounts if there are reasonable grounds to believe that the provisions of the Companies Act, 1956 have been violated;
- (f) certification of documents by company secretaries in certain cases; and
- (g) conferring power upon the Central Government to order 'compliance audit' with regard to secretarial audits.

5. The Joint Parliamentary Committee (JPC), which examined the recent stock market 'scam', has made certain recommendations, some of which are as follows:—

- (i) provision for a cap on the number of investments any individual can float and there should be a minimum shareholding to prevent proliferation of shell companies;
- (ii) restrictions on inter-corporate loans in case the loan/deposit is to be made to a share-broking company;

(iii) preventing recurrence of vanishing companies and necessary identification of promoters/directors at the time of incorporation to be made mandatory.

6. The Bill also proposes to amend the Companies Act, 1956 to give effect to recommendations in the preceding paragraph.

7. Apart from the above, there is also a need to amend certain sections, (including sections 87, 119, 252 and 560) of the Companies Act, 1956 relating to voting rights, liability of trustees for the debenture holders, minimum number of directors and power of Registrar to strike a defunct company off the register so as to bring them in line with the present need of the corporate sector. The Bill, therefore, also contains provisions to amend the said sections.

8. In view of the above, it is proposed to withdraw the Companies Bill, 1997 pending in the Rajya Sabha.

9. The Bill seeks to achieve the above objects.

JASWANT SINGH.

FINANCIAL MEMORANDUM

Clause 171 of the Bill empowers the Central Government to appoint a Director General of Inspection and Investigation who shall be responsible for the conduct of all inspections and investigations under the Act and shall exercise such supervision and control over all the inspections and investigations made under this Act and to perform such functions and discharge such duties as may be given to him by the Central Government. The creation of the post of Director General Inspection and Investigation along with personal staff will involve additional expenditure of approximately Rs. 10.00 lakhs in a financial year.

The Bill will not involve any other expenditure of recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill proposes to amend section 2 of the Companies Act, 1956 relating to definitions. Sub-clause (1A) proposes to empower the Central Government to prescribe standards of accounting recommended by the Institute of Chartered Accountants of India in consultation with the National Advisory Committee on Accounting Standards.

Clause 8 of the Bill proposes to amend section 13 of the Companies Act, 1956. It is proposed to confer powers upon the Central Government to prescribe the method of printing the memorandum of a company.

Clause 12 of the Bill proposes to amend section 30 of the Companies Act, 1956 relating to form and signature of articles. This clause, *inter alia*, proposes to empower the Central Government to prescribe the method of printing the articles of association of a company.

Clause 14 of the Bill proposes to amend section 39 of the Companies Act, 1956 relating to copies of memorandum or articles, etc. to be given to members. Sub-clause (a) of the said clause proposes to empower the Central Government to prescribe payment of such fees to provide for copies of documents as mentioned in that section to a member.

Clause 17 of the Bill proposes to amend section 51 of the Companies Act, 1956 relating to service of documents on company. This clause proposes to confer powers upon the Central Government to prescribe various other means of serving of documents in addition to the existing modes and also to prescribe various means of serving of records of beneficial ownership by depositories on the company, in the case where securities are held in a depository.

Clause 18 of the Bill proposes to amend section 52 of the Companies Act, 1956 relating to servicing of documents on Registrar. This clause proposes to empower the Central Government to provide other means of serving documents on the Registrar including the means of electronic mode in addition to the existing modes.

Clause 22 of the Bill proposes to substitute section 60 of the Companies Act, 1956 relating to registration of prospects. Item (iii) of sub-clause (b) of sub-section (1) of that section provides for documents to be attached to a prospectus.

Clause 30 of the Bill proposes to substitute section 69 of the Companies Act, 1956 relating to prohibition of allotment unless minimum subscription received. Sub-section (7) of that section provides for prescribing a period within which minimum subscription is to be received. It confers power upon the Central Government to prescribe the rate of interest payable by directors, if money received by company is not refunded within eight days of the expiry of the due date.

Clause 34 of the Bill proposes to substitute section 73 of the Companies Act, 1956 relating to allotment to be dealt in as stock exchange. Sub-clauses (4) and (5) of this clause confer power upon the Central Government to prescribe the rate of interest payable by directors, if the application money is not repaid within eight days of the due date.

Clause 36 of the Bill proposes to substitute section 76 of the Companies Act, 1956 relating to power to pay certain commission. Sub-clause (1) of this clause empowers the Central Government to provide for upper limit of percentage of commission for procuring subscription for any securities of the company.

Clause 42 of the Bill proposes to substitute section 81 of the Companies Act, 1956 relating to further issue of capital. Clause (b) of sub-section (1) of that section empowers the Central Government to provide for particulars of notice of offer to increase the subscribed capital of the company.

Sub-section (5) and clause (c) of sub-section (7) of section 81 provides for the conditions to be prescribed for Employees, Stock Option.

Clause 45 of the Bill proposes to insert a new section 83A in the Companies Act, 1956 relating to obligation to reconcile securities with depository. Sub-clause (1) of this clause provides for maximum time-limit, within which every company should reconcile the securities issued by it.

Clause 47 of the Bill proposes to amend section 87 of the Companies Act, 1956 relating to voting rights. Proviso to item (b) of sub-clause (1) of the said clause empowers the Central Government to prescribe conditions for accrual of voting rights in respect of preference shareholders.

Clause 60 of the Bill proposes to amend section 118 of the Companies Act, 1956 relating to right to obtain copies of and in respect of trust deed. Sub-clause (a) of the said clause confer powers upon the Central Government to prescribe fee to be paid for procuring copy of any trust deed for securing any issue of debentures by the existing debenture holders or any member of the company.

Clause 67 of the Bill proposes to substitute section 138 of the Companies Act, 1956. Sub-clause (1) of this clause provides that the form for giving intimation of satisfaction of any charge to be filed with Registrar. The proviso to the said clause also provides for a fee to be paid by the company if it satisfies Registrar that it had sufficient cause for not giving the intimation within the period prescribed in that clause.

Clause 70 of the Bill proposes to insert a new section 152AB in the Companies Act, 1956. The said clause proposes to empower the Central Government to prescribe certain modes and safeguards thereto for maintaining particulars of holders of security a company.

Clause 72 of the Bill proposes to substitute section 159 of the Companies Act, 1956 relating to annual returns to be made by company. This clause empowers the Central Government to prescribe such form in which every company has to give particulars in the return for filing the same with the Registrar.

Clause 91 of the Bill proposes to substitute section 205 of the Companies Act, 1956 relating to dividend to be paid only out of profits. Sub-clause (7) of the said clause confers power upon the Central Government to prescribe maximum percentage for reserves, not exceeding ten per cent., of profits of a company for any financial year.

Sub-clause (9) of clause 91 confers power upon the Central Government to prescribe date and manner in which the dividend shall be paid only in the bank account of the shareholders.

Clause 99 of the Bill proposes to insert a new section 215A in the Companies Act, 1956 relating to chief accounts officer. This clause provides for upper limit of paid-up capital for public companies to appoint a chief accounts officer.

Clause 100 of the Bill proposes to amend section 217 of the Companies Act, 1956. This clause provides for manner in which measures taken for the protection of environment and any other matter, to be attached with the Board's report. This clause also provides for certain other authorities, to which, and the form, in which, a company shall file the details of remuneration of its employees.

Clause 101 of the Bill proposes to amend section 219 of the Companies Act, 1956. This clause provides for the manner by virtue of which a person become entitle to get auditor's report and every other document of a company.

Clause 102 proposes to amend section 220 of the Companies Act, 1956. This clause empowers the Central Government to provide for number of copies of the Balance Sheet and the Profit and Loss account to be filed with the Registrar, Director (Research and Statistics) of the Department of Company Affairs and the Reserve Bank of India.

Clause 103 proposes to amend section 223 of the Companies Act, 1956. This clause provides for a sum to be charged to obtain a copy of a statement by every member and every creditor of a company.

Clause 104 proposes to amend section 224 of the Companies Act, 1956. This clause empowers the Central Government to provide for certain conditions in respect of appointment or reappointment of the auditors.

Clause 107 proposes to insert a new section 226A in the Companies Act, 1956. This clause confer powers upon the Central Government to prescribe certain services that an auditor is prohibited to provide services other than audit.

Clause 109 proposes to amend section 228 of the Companies Act, 1956. This clause provides for the manner in which audit shall be carried out in the case of a banking company having a branch office outside India.

Clause 112 proposes to amend section 233A of the Companies Act, 1956. This clause provides for the manner in which the expenses and incidentals of special audit shall be paid by the company.

Clause 118 proposes to amend section 252 of the Companies Act, 1956. This clause provides for number of woman directors and independent directors to be appointed. This clause also provides for the manner in which small shareholders may elect a director.

Clause 136 proposes to amend section 292A of the Companies Act, 1956. This clause empowers the Central Government to provide for the maximum number of independent directors in every public company and also to provide for powers and functions of the Audit Committee.

Clause 138 of the Bill proposes to substitute section 294 of the Companies Act, 1956. Proviso to sub-clause (1) and sub-clause (2) provides for the form in which substantial interest of sole selling agents in the company may be disclosed which shall be shown as a separate item in the Board's report.

Clause 141 of the Bill proposes to amend section 295 of the Companies Act, 1956. Proviso to sub-clause (1) of the said clause provides for conditions for giving loans by a company to managing or whole time director of the company.

Clause 142 of the Bill proposes to amend section 297 of the Companies Act, 1956. This clause empowers the Central Government to provide for limit of the amount of value of goods, materials and services in respect of a contract between the company and its directors.

Clause 145 of the Bill proposes to amend section 301 of the Companies Act, 1956. This clause provides for such limit of amount of value of goods, materials and services in respect of a contract etc., below which the provisions of this section shall not apply.

Clause 147 of the Bill proposes to amend section 304 of the Companies Act, 1956. This clause provides for charges for inspection of register kept as per section 303 of the Companies Act, 1956 by persons other than members of the company.

Clause 151 of the Bill proposes to amend section 314 of the Companies Act, 1956. This clause empowers the Central Government to provide for extent of remuneration of a relative of a director, who cannot hold a place of profit. It also provides that appointment of a relative of a director holding more than two per cent. of the equity of the company, shall be subject to approval of the Central Government if remuneration of the appointee exceeds certain sum prescribed by the Central Government.

Clause 154 of the Bill proposes to amend section 349 of the Companies Act, 1956 which provides for different methods for determining the profits for any class or classes of companies.

Clause 155 of the Bill proposes to amend section 372A of the Companies Act, 1956 empowers the Central Government to provide for limits to the companies registered as stock

broker or any other intermediary which may receive inter corporate loans or deposits and the extent to which such company may make loan or inter corporate deposits.

Clause 156 of the Bill proposes to substitute section 383A of the Companies Act, 1956. Sub-clause (1) of the said clause empowers the Central Government to provide for the limit of paid up capital of a company to employ a whole time company secretary.

Sub-clause (4) of clause 156 empowers the Central Government to prescribe paid up share capital of a company for which a certificate from a company secretary in whole-time practice has to be attached with its Board's report in such form and subject to such conditions.

Clause 157 of the Bill proposes to insert two new sections 383B and 383C in the Companies Act, 1956. Section 383C empowers the Central Government to provide for the form and the manner in which a whole time company secretary shall certify all documents, returns, forms etc.

Clause 170 of the Bill proposes to amend section 560 of the Companies Act, 1956. This clause empowers the Central Government to prescribe the procedures for striking off the company's name from the register if the Registrar is satisfied that the company is not carrying on its business.

Clause 172 of the Bill proposes to amend section 610 of the Companies Act, 1956. This clause empowers the Central Government to provide for fees to be paid by any person who wants to inspect or obtain copies of documents as provided in that section.

YOGENDRA NARAIN,
Secretary-General.